

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

In re

Oakwood Homes Corporation,

et al.,

Debtors.

Chapter 11

Case No. 02-13396 (PJW)

OHC Liquidation Trust,

Plaintiff,

v.

Credit Suisse (f/k/a Credit Suisse First Boston, a Swiss banking corporation), Credit Suisse Securities (USA), LLC (f/k/a Credit Suisse First Boston LLC), Credit Suisse Holdings (USA), Inc. (f/k/a Credit Suisse First Boston, Inc.), and Credit Suisse (USA), Inc. (f/k/a Credit Suisse First Boston (U.S.A.), Inc.), the subsidiaries and affiliates of each, and Does 1 through 100,

Defendants.

Adversary Proceeding  
No. 04-57060 (PJW)

Civil Action No. 07-799 (JJF)

**DOCUMENTS  
IN SUPPORT OF DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

**VOLUME II**

***EXHIBIT N***

OAKWOOD HOMES CORPORATION

Minutes of the Meeting of the Board of Directors  
Held Wednesday, September 20, 2000

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Pursuant to written notice mailed to all of the Directors of Oakwood Homes Corporation (the "Corporation"), a meeting of the Board of Directors of the Corporation (the "Board") was held on Wednesday, September 20, 2000 at the offices of the Corporation located at 7800 McCloud Road, Greensboro, North Carolina.

Prior to addressing the formal business of the meeting, Mr. Edwards met with the non-employee directors of the Corporation. The non-employee directors attending the meeting were Clarence W. Walker, Dennis I. Meyer, Sabin C. Streeter, Kermit G. Phillips, II and H. Michael Weaver, in person; Roger W. Schipke and Francis T. Vincent, Jr. attended the meeting by telephonic conference call such that all directors could simultaneously hear each other.

At the conclusion of the meeting with the non-employee directors, Mr. Edwards offered his resignation as Chief Executive Officer and a director of the Corporation and as an officer and director of the Corporation's subsidiaries. Mr. Edwards' resignation was accepted by the non-employee directors. Mr. Edwards left the meeting.

Duane D. Daggett, President of the Corporation, Robert A. Smith, Executive Vice President and a director of the Corporation, and Myles E. Standish, Executive Vice President of the Corporation, joined the meeting.

The first order of business was election of a Chairman of the Board. After discussion, upon motion duly made and seconded, the following resolution was adopted.

RESOLVED, that Dennis I. Meyer be, and he hereby is, elected Chairman of the Board of Directors of the Corporation to serve, subject to the provisions of the Bylaws of the Corporation, until his successor is duly elected and qualified.

The next item of business was consideration of electing directors to fill vacancies on the Board. After discussion, upon motion duly made and seconded, the following preambles and resolutions were adopted:

WHEREAS, there are three vacancies on the Board of Directors and it is desirable and in the best interest of the Corporation and its shareholders that two of such vacancies on the Board be filled; and

WHEREAS, Section 3.6 of the Bylaws of the Corporation permits the Board to fill a vacancy not sooner filled by the shareholders; and

WHEREAS, Duane D. Daggett and Myles E. Standish are qualified to serve as directors of the Corporation and have expressed a willingness to serve.

NOW, THEREFORE, BE IT RESOLVED, that Duane D. Daggett be elected a director of the Corporation, to serve until the 2001 Annual Meeting of the Corporation's shareholders, as a member of the class of directors to serve until the 2002 Annual Meeting of shareholders, and until his successor is elected and qualified; and

FURTHER RESOLVED, that Myles E. Standish be elected a director of the Corporation, to serve until the 2001 Annual Meeting of the Corporation's shareholders, as a member of the class of directors to serve until the 2003 Annual Meeting of shareholders, and until his successor is elected and qualified; and

FURTHER RESOLVED, that Duane D. Daggett and Myles E. Standish receive no additional compensation for services rendered to the Corporation as directors, inasmuch as they are already adequately compensated for services rendered as executive officers of the Corporation.

The next item of business was to reconstitute the Executive Committee of the Board. After discussion, upon motion duly made and seconded, the following resolutions were adopted:

RESOLVED, that Dennis I. Meyer, Kermit G. Phillips, II, H. Michael Weaver, Duane D. Daggett and Myles E. Standish be, and they hereby are, elected to the Executive Committee of this Board of Directors, to serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until their successors shall be elected; and

FURTHER RESOLVED, that Dennis I. Meyer be, and he hereby is, elected as Chairman of the Executive Committee of this Board of Directors of this Corporation, to serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until his successor shall be elected.

The next item of business was to consider establishment of a Management Committee of the Board of Directors. After discussion, upon motion duly made and seconded, the following resolutions were adopted:

RESOLVED, that Robert A. Smith, Duane D. Daggett and Myles E. Standish be, and they hereby are, elected to the Management Committee of this Board of Directors, to serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until their successors shall be elected; and



FURTHER RESOLVED, that Duane D. Daggett be, and he hereby is, elected as Chairman of the Management Committee of this Board of Directors of this Corporation, to serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until his successor shall be elected; and

FURTHER RESOLVED, that pursuant to Section 55-8-25 of the North Carolina Business Corporation Act (the "Act"), the Management Committee shall have and may exercise all of the authority of the Board of Directors to do the following:

1. Organize subsidiaries of the Corporation;
2. Make investments in and advances to subsidiaries of the Corporation;
3. Acquire or dispose of assets of the Corporation in amounts not greater than \$5,000,000 with respect to any single transaction;
4. Enter into contracts for borrowed money or lease agreements;
5. Guarantee the obligations of subsidiaries of the Corporation;
6. Cause subsidiaries of the Corporation to enter into contract to which the Corporation or any subsidiary of the Corporation is already a party; and
7. Amend any employee benefit plan.

The next item of business was consideration of election of a chief executive officer of the Corporation. After discussion, upon motion duly made and seconded, the following resolution was adopted:

RESOLVED, that Duane D. Daggett be, and he hereby is, elected Chief Executive Officer of the Corporation to serve, subject to the provisions of the Bylaws of the Corporation, until his successor is duly elected and qualified.

There followed a discussion among the directors of a number of issues facing the Corporation and the current status of the Corporation's businesses and operations.

There being no further business to come before the Board, upon motion duly made, seconded and carried, the meeting was adjourned.

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Dennis I. Meyer  
Chairman

***EXHIBIT O***

OAKWOOD HOMES CORPORATION

Minutes of the Meeting of the Board of Directors  
Held Monday, October 16, 2000

Pursuant to written notice mailed to all of the Directors of Oakwood Homes Corporation (the "Corporation"), a meeting of the Board of Directors of the Corporation (the "Board") was held on Monday, October 16, 2000 at the offices of Baker & McKenzie in New York City.

Dennis I. Meyer, Chairman of the Corporation, called the meeting to order and served as Chairman of the meeting. Douglas R. Muir, Secretary of the Corporation, served as Secretary of the meeting.

Members of the Board present at the meeting were as follows: Dennis I. Meyer, Kermit G. Phillips, II, Sabin C. Streeter, Roger W. Schipke, H. Michael Weaver, Francis T. Vincent, Jr., Clarence W. Walker, Duane D. Daggett, Robert A. Smith and Myles E. Standish.

The Chairman then declared that a quorum was present and the meeting was therefore duly organized and constituted for the transaction of business.

The first order of business to come before the meeting was a discussion of potential financial arrangements with Mr. William G. Edwards, the former Chairman and Chief Executive Officer of the Corporation who had recently left the employment of the Corporation, and Mr. J. Michael Stidham, who is resigning his position as an Executive Vice President of the Corporation's principal retail subsidiary, as well as the consulting arrangement between the Corporation and Mr. Nicholas J. St. George, the Corporation's former Chairman and Chief Executive Officer. Following discussion, it was the consensus of the directors that the Executive Committee of the Board should make such financial arrangements with Messrs. Edwards, Stidham and St. George as in their judgment were in the best interest of the Corporation and its shareholders.

The next item of business was a report by Mr. Meyer on the meeting the preceding week of the Executive Committee of the Corporation, at which were discussed in considerable detail, among other things, the items on the agenda for today's meeting of the Board.

The next item of business was a briefing by Mr. Smith on the highlights of the Corporation's financial budget for the fiscal year ending September 30, 2001. An extensive discussion about the budget and related business issues ensued.

The next item of business was a report by Mr. Daggett on his activities and actions since becoming Chief Executive Officer of the Corporation. Among other things, Mr. Daggett discussed his actions to strengthen the retail organization, enhance revenues, improve retail training, reorganize management and establish performance measurement and related compensation systems.

In response to a question, Mr. Muir gave a brief report on the Corporation's asset-backed securities program, the ABS market generally and ABS-related risks affecting the Corporation.

The next item of business was a report by Mr. Smith on the status of management's efforts to obtain replacement financing for the Corporation's existing warehouse and revolving credit facilities.

The next item of business was a presentation by Mr. Daggett on the elements of the Performance Improvement Plan he has crafted and implemented to improve the Corporation's results of operations and financial strength.

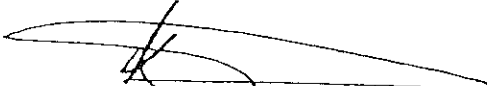
The final item of business was a proposal by Mr. Daggett to promote certain officers of the Corporation. Following discussion, the following resolution was unanimously adopted:

RESOLVED, that the following persons be, and they hereby are, elected to the offices set forth opposite their respective names below, each to serve, subject to the provisions of the Bylaws of the Corporation, until his or her respective successor is duly elected and qualified:

<u>Name</u>	<u>Office</u>
Robert A. Smith	Executive Vice President – Financial Operations and Assistant Secretary
Myles E. Standish	Executive Vice President – Operations, General Counsel and Assistant Secretary
Douglas R. Muir	Executive Vice President – Treasury and Strategic Planning, Secretary and Treasurer
Suzanne H. Wood	Executive Vice President and Chief Financial Officer and Assistant Secretary
Timothy J. Graff	Senior Vice President – Customer Service

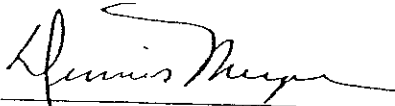
Mr. Daggett briefed the Board on personnel decisions and related promotions affecting other persons employed by various of the Corporation's subsidiaries which had been made in support of the Performance Improvement Plan and asked that the record of the meeting reflect the Board's approval of same. The Board unanimously indicated its approval.

There being no further business to come before the Board, upon motion duly made, seconded and carried, the meeting was adjourned.



Douglas R. Muir  
Secretary

APPROVED:



Dennis I. Meyer  
Chairman

***EXHIBIT P***

OAKWOOD HOMES CORPORATION

Minutes of the Meeting of the Board of Directors  
Held Wednesday, November 15, 2000

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Pursuant to written notice mailed to all of the Directors of Oakwood Homes Corporation (the "Corporation"), a meeting of the Board of Directors of the Corporation (the "Board") was held on Wednesday, November 15, 2000 at the offices of the Corporation located at 7800 McCloud Road, Greensboro, North Carolina.

Dennis I. Meyer, Chairman of the Corporation, called the meeting to order and served as Chairman of the meeting. Douglas R. Muir, Secretary of the Corporation, served as Secretary of the meeting.

Members of the Board present at the meeting were as follows: Dennis I. Meyer, Kermit G. Phillips, II, Roger W. Schipke, Clarence W. Walker, Duane D. Daggett and Robert A. Smith, in person; Sabin C. Streeter, H. Michael Weaver, Francis T. Vincent, Jr. and Myles E. Standish participated in the meeting by means of a telephonic conference call such that all directors could simultaneously hear each other. Also present were Raylen W. Gritton, Forrest R. Quesenberry, Michael E. Taylor and Macy W. Foster of the Corporation's retail operations, Michael D. Rutherford of the Corporation's consumer finance operations and Suzanne H. Wood, Executive Vice President and Chief Financial Officer of the Corporation.

The first item of business to come before the meeting was a presentation by Mr. Rutherford on the Corporation's consumer finance operations, including credit performance trends, origination trends and matters receiving particular attention from management, including credit quality, repossessions, delinquency and training of retail personnel on consumer finance programs. After a question and answer session, Mr. Rutherford left the meeting.

The next item of business to come before the meeting was a presentation by Mr. Gritton and the other members of management of the Corporation's retail operations on initiatives being undertaken in retail, including retail sales initiatives, implementation of the Results Management System and changes in the retail compensation system, including the goals and objectives of the new plan being designed and implemented. After a question and answer session, Messrs. Gritton, Foster, Taylor and Quesenberry left the meeting.

The next item of business to come before the meeting was consideration of approval of the minutes of Board meetings held on June 30, August 8 and October 16. Upon motion duly made and seconded, the minutes were approved.

The next item of business was a report from Mr. Walker on the Audit Committee meeting held on November 7. Mr. Walker reported that it was possible the Corporation's independent accountants would issue a "going concern" report with respect to the Corporation's financial statements as of and for the year ended September 30, 2000, but that

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the ultimate decision by the accountants was dependent upon their evaluation of all the relevant facts and circumstances, including the Corporation's projected future results of operations and the Corporation's continued access to short-term credit. Mr. Walker also reported that the committee concurred with the conclusion of management and the independent accountants that a valuation allowance should be provided for substantially all of the Corporation's deferred income tax assets. He also reported that the Committee, after extensive consideration, had decided to endorse management's decision not to obtain independent valuations of retained REMIC interests, and noted that the independent accountants had been complementary of improvements implemented by management in its processes for valuing such interests. Finally, Mr. Walker reported that the Committee had reviewed the potential effects of prospective changes in the Corporation's revenue recognition practices as a result of adoption of the provisions of Staff Accounting Bulletin No. 101 in fiscal 2001.

The next item of business was a review by Mrs. Wood of drafts of the Corporation's financial statements as of and for the year ended September 30, 2000. A discussion ensued.

The next item of business was a report by Mr. Smith on the status of new short-term credit facilities which management currently was negotiating. Mr. Smith reported that the planned facilities were a revolving facility of approximately \$175 million in size (subject to sufficient appraisals on the assets securing the facility) with Foothill Capital and a loan purchase facility of approximately \$200 million with Credit Suisse First Boston. Mr. Smith indicated he believed that CSFB would require a warrant covering a significant number of shares of the Corporation's common stock as part of the consideration for the facility. Mr. Muir then gave a report on the status of efforts to monetize some or all of the Corporation's inventory of subordinated asset-backed securities, as well as the liquidity issues associated with providing retail financing for customers desiring to purchase repossessed homes.

The next item of business was a report by Mr. Daggett on the Performance Improvement Plan for fiscal 2001 drafted by Messrs. Daggett, Smith and Standish. A discussion ensued.

The next item of business was election of officers of the Corporation. Upon motion duly made and seconded, the following resolution was adopted:

RESOLVED, that the following persons be, and they hereby are, elected to the offices set forth opposite their respective names below, each to serve, subject to the provisions of the Bylaws of the Corporation, until his or her respective successor is duly elected and qualified:

<u>Name</u>	<u>Office</u>
Dennis I Meyer	Chairman
Duane D. Daggett	President and Chief Executive Officer
Robert A. Smith	Executive Vice President - Financial Operations and Assistant Secretary

Myles E. Standish	Executive Vice President - Operations, General Counsel and Assistant Secretary
Douglas R. Muir	Executive Vice President, Secretary and Treasurer
Suzanne H. Wood	Executive Vice President and Chief Financial Officer and Assistant Secretary
Chris J. Paul	Senior Vice President - Information Technology
Timothy J. Graff	Senior Vice President - Customer Service
John Hernandez, Jr.	Vice President - Information Technology
David C. Lyle	Vice President - Applications Development
Paul W. Macksood	Vice President - Human Resources
Earl C. Brewer, Jr.	Vice President - Tax
Lisa K. Carter	Vice President

The next item of business was designation of executive officers of the Corporation. Upon motion duly made and seconded, the following preamble and resolution were adopted:

WHEREAS, it is desirable and in the best interest of the Corporation, for the purpose of various filings with the Securities and Exchange Commission and for internal matters, that the Corporation determine and state its executive officers.

NOW, THEREFORE, BE IT RESOLVED, that the following persons be considered executive officers of the Corporation:

Duane D. Daggett  
Robert A. Smith  
Myles E. Standish  
Douglas R. Muir  
Suzanne H. Wood

The next item of business was consideration of the date of the annual meeting of the shareholders of the Corporation and the record date for same. Upon motion duly made and seconded, the following preambles and resolutions were adopted:

WHEREAS, Section 2.2 of Article II of the Bylaws of the Corporation provides that the Annual Meeting of Shareholders shall be at 2:00 p.m. on the fifth Wednesday of the calendar year; and

WHEREAS, it is appropriate of the Board of Directors to designate January 31, 2001 as the date of the 2001 Annual Meeting of Shareholders and to fix the record date for determination of shareholders entitled to notice of and to vote at the 2001 Annual Meeting of Shareholders.

NOW, THEREFORE, BE IT RESOLVED, that the 2001 Annual Meeting of shareholders of the Corporation be held at 2:00 p.m., Local Time, at the

Joseph S. Koury Convention Center, Greensboro, North Carolina, on Wednesday, January 31, 2001; and

FURTHER RESOLVED, that the close of business on December 8, 2000 be, and it hereby is, fixed as the record date for the determination of shareholders entitled to notice of and to vote at the 2001 Annual Meeting of Shareholders of the Corporation to be held January 31, 2001 and that only those shareholders of the Corporation of record at the close of business on December 8, 2000 shall be entitled to notice of and to vote as said meeting.

The next item of business was consideration of the persons to be recommended to the shareholders for election to the Board of Directors and of the persons to be designated as proxies for the annual meeting of shareholders. Upon motion duly made and seconded, the following preambles and resolutions were adopted:

WHEREAS, the Board of Directors has designated January 31, 2001 as the date of the 2001 Annual Meeting of Shareholders and December 8, 2000 as the record date for said Annual Meeting; and

WHEREAS, Section 3.2 of the Bylaws of the Corporation provides that the number of members of the Board of Directors shall be a maximum of fifteen and a minimum of seven with the exact number fixed by resolution of the Board of Directors; and

WHEREAS, it is appropriate for the Board of Directors to (i) designate individuals to be suggested to the shareholders as proxies for the 2001 Annual Meeting of Shareholders, (ii) fix the number of members of the Board of Directors, (iii) name the nominees for election as Directors and (iv) direct the mailing of the Annual Report to Shareholders, Proxy Statement and Notice of Annual Meeting.

NOW, THEREFORE, BE IT RESOLVED, that Duane D. Daggett and Myles E. Standish, and each of them and their respective substitutes, be, and they hereby are, designated as the individuals to be suggested to the shareholders of the Corporation as proxies for such shareholders at the Annual Meeting of Shareholders to be held Wednesday, January 31, 2001 and any adjournment thereof, and that the names of said individuals also be included in the form of proxy to be solicited by the Board of Directors of this Corporation for use at said Annual Meeting of Shareholders and any adjournment thereof; and

FURTHER RESOLVED, that the number of members of the Board of Directors be fixed at eleven, and

FURTHER RESOLVED, that the Board of Directors proposes that the following persons be nominated for election to membership of the Board of Directors of the Corporation at the Annual Meeting of Shareholders to be held on January 31, 2001: Clarence W. Walker, Dennis I. Meyer and Robert A. Smith for terms ending in 2004; Myles E. Standish for a term ending in 2003; and Duane D. Daggett for a term ending in 2002; and that there be a vacancy on the Board to be filled by this

Board of Directors or the shareholders when an appropriate candidate for the vacancy is identified; and

FURTHER RESOLVED, that this Corporation's Annual Report to Shareholders for the fiscal year ended September 30, 2000, and the Notice of the 2001 Annual Meeting, Proxy Statement and form of proxy be mailed on December 27, 2000 or as soon thereafter as possible, to all of the shareholders of record of this Corporation on December 8, 2000.

The next item of business was consideration of a resolution to establish the compensation of non-employee directors of the Corporation. Upon motion duly made and seconded, the following preamble and resolutions were adopted:

WHEREAS, it is desirable to set the compensation of directors of the Corporation.

NOW, THEREFORE, BE IT RESOLVED, that the directors of the Corporation who are not also employed by the Corporation receive compensation as directors in the amount of \$8,500 per quarter and that they also receive a fee of \$1,000 for each meeting of the Board of Directors attended, \$1,500 for each committee meeting of the Board of Directors attended and not held on the same day as a meeting of the Board of Directors, and \$500 for each meeting participated in by conference telephone; and

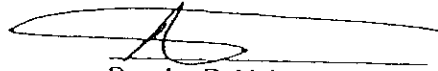
FURTHER RESOLVED, that the directors of the Corporation who are not also employed by the Corporation and who are chairmen of committees of the Board of Directors receive compensation in the amount of \$1,000 per quarter.

The next item of business was a report by Mr. Meyer on a proposal received from Mr. Lee Posey, Chairman of Palm Harbor Homes, for Mr. Posey to become chairman and chief executive officer of the Corporation and for the Corporation to hire Mr. Ladd Dawson, formerly of American Homestar, to assist Mr. Posey. Mr. Meyer reported that Mr. Posey's proposal had been carefully considered by the Executive Committee and had been declined.

The next item of business was a report by Mr. Meyer on the status of negotiations with Mr. St. George with respect to the existing consulting arrangement with Mr. St. George as well as the office expenses for Mr. St. George currently being paid by the Corporation, as well as the negotiations with Mr. Stidham, a former officer of a subsidiary of the Corporation, who was to become an independent retailer selling homes built by the Corporation.

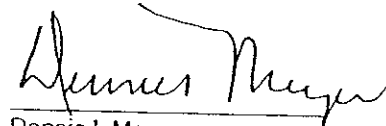
The next item of business was a report by Mr. Meyer on a meeting held with Mr. Joseph H. Stegmayer, who previously was associated with Clayton Homes and Champion Industries and who now is responsible for the manufactured housing operations of Centex, the subject of which was ways in which the Corporation and Centex might enter into business arrangements regarding sale of sale of repossessed homes and performance of service work.

There being no further business to come before the Board, upon motion duly made, seconded and carried, the meeting was adjourned.



Douglas R. Muir  
Secretary

APPROVED:



Dennis I. Meyer  
Chairman

***EXHIBIT Q***

OAKWOOD HOMES CORPORATION

Minutes of the Meeting of the Board of Directors  
Held Tuesday and Wednesday, January 30 and 31, 2001

Pursuant to written notice mailed to all of the Directors of Oakwood Homes Corporation (the "Corporation"), a meeting of the Board of Directors of the Corporation (the "Board") was held on Tuesday, January 30, 2001 at the offices of the Corporation located at 7800 McCloud Road, Greensboro, North Carolina.

Dennis I. Meyer, Chairman of the Corporation, called the meeting to order and served as Chairman of the meeting. Douglas R. Muir, Secretary of the Corporation, served as Secretary of the meeting.

Members of the Board present at the meeting were as follows: Duane D. Daggett, Robert A. Smith, Myles E. Standish, Dennis I. Meyer, Sabin C. Streeter and Clarence W. Walker, in person; Francis T. Vincent, Jr. attended the meeting by means of a telephonic conference call by which all directors could simultaneously hear each other. Also present was Suzanne H. Wood, Executive Vice President and Chief Financial Officer.

The Chairman then declared that a quorum was present and the meeting was therefore duly organized and constituted for the transaction of business.

The first item of business was a report by Mr. Daggett on the status of the Corporation's businesses and the implementation of the Performance Improvement Plan. A discussion followed.

Kermit G. Phillips, II, a director of the Corporation, joined the meeting in person.

The next item of business was a report by Messrs. Smith and Muir on the status of negotiations on the proposed new loan warehouse purchase and revolving credit facilities as well as the status of relations with the Corporation's existing lenders. Messrs. Smith and Muir also reported that management had attempted to have further discussions with representatives of Moody's Investors Service, who had almost peremptorily taken an ill-informed rating action in late December. However, with the exception of Mr. Meyer's and Mr. Muir's conversations with a Moody's representative shortly following the proposed December 2000 rating action (which did not take place), there had been no communication with the agency. Mr. Muir reported that management had continued to keep Moody's informed of the status of the business by means of voice mail messages and email, but that no messages had been returned or inquiries received.

H. Michael Weaver, a director of the Corporation, joined the meeting in person.

The next item of business was a report by Mr. Muir on his efforts to monetize some or all of the Corporation's inventory of subordinated asset-backed securities.

The next item of business was a report by Mr. Walker on the Audit Committee meeting held the preceding week. Mr. Walker reported that the Committee had reviewed the Corporation's first quarter results with management and the independent accountants and that there were no items that the Committee believed should be reported to the Board.

The next item of business was a report from Mr. Meyer on recent actions taken by the Compensation Committee. Mr. Meyer reported that the Committee had granted stock options and made restricted stock awards to a substantial number of employees of the Corporation. Mr. Meyer reported that the vesting schedule for the options and awards was considerably more rapid than typically had been the case in the past, which the Committee believed would be advantageous to the Corporation in its efforts to retain key employees, retention being a more significant issue currently than in the past due to difficult business conditions. Mr. Meyer also reported that the Committee had established target bonus amounts to employees whose compensation is subject to determination by the Committee, and had been informed of bonus amounts for a substantial number of other executives and key employees whose compensation is determined by management. Mr. Meyer reported that in each case payment of the bonuses was linked to achievement of each employee's objectives set forth in the memoranda prepared as part of the Results Management System implemented by Mr. Daggett; the timing of payment of bonuses earned varied among employees, from lower level employees having the ability to receive payment of a portion of annual targeted bonuses on an interim basis to Mr. Daggett, all of whose bonus, if earned, would be paid following the end of the Corporation's fiscal year.

The next item of business was a report by Mr. Smith concerning a communication from the New York Stock Exchange in which the Exchange advised that the Corporation's shares were subject to delisting if they continued to trade for less than \$1 per share. Mr. Smith reported that no action was possible by the exchange until at least June 2001, and then only if the shares continued to trade at less than \$1.

The next item of business was a report by Mr. Smith on the level of unsold repossessed properties. A discussion ensued.

The next item of business was a report by Mr. Daggett, in which he covered, among other things, current industry conditions, important issues being addressed in the retail operations, sales levels currently and projected for the near term, gross margins, selling costs and delinquencies and repossessions in the loan portfolio.

Roger W. Schipke, a director of the Corporation, joined the meeting.

Following Mr. Daggett's presentation, an extensive discussion ensued dealing with a number of significant business issues facing the Corporation.

The next item of business was a report by Mr. Standish on the organizational changes he planned to implement in the retail organization. The Board expressed approval of the planned changes and of changes in the retail compensation plans designed to support the reorganization and other changes Mr. Standish intends to implement in the retail operations.



The next item of business was a report by Mr. Smith on the range of possible results of operations for the balance of the Corporation's fiscal year, together with an overview of many of the uncertainties which make prediction of results difficult.

The next item of business was a report by Mr. Standish on the status of the HouseSmart operations in the Texas and Arizona markets. Mr. Standish reported that he intended to close the HouseSmart sales centers or convert them to traditional Oakwood sales centers.

Mr. Vincent left the meeting.

There followed the formal business of the meeting an extensive discussion on a wide range of topics affecting various areas of the business, in which additional questions from the directors were answered by management.

The meeting then recessed until the following day.

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The meeting reconvened on January 31, 2001.

Members of the Board present at the meeting were as follows: Duane D. Daggett, Robert A. Smith, Myles E. Standish, Dennis I. Meyer, Sabin C. Streeter, Clarence W. Walker, Roger W. Schipke, Kermit G. Phillips, II and H. Michael Weaver, in person; Francis T. Vincent, Jr. attended the meeting by means of a telephonic conference call by which all directors could simultaneously hear each other.

The next item of business was election of the Compensation Committee of the Board of Directors. After discussion, the following resolutions were adopted:

RESOLVED, that Francis T. Vincent, Jr., Roger W. Schipke and Dennis I. Meyer be, and they hereby are, elected to the Compensation Committee of this Board of Directors, to serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until their successors shall be elected; and

FURTHER RESOLVED, that Roger W. Schipke be, and he hereby is, elected Chairman of the Compensation Committee of the Board of Directors of this Corporation, to serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until his successor is elected.

The next item of business was election of the Audit Committee of the Board of Directors. After discussion, the following resolutions were adopted:

RESOLVED, that Clarence W. Walker, Kermit G. Phillips, II, Sabin C. Streeter and H. Michael Weaver be, and they hereby are, elected to the Audit Committee of this Board of Directors, to serve, subject to the Bylaws of this

Corporation, until the next annual meeting of this Board of Directors and until their successors shall be elected; and

FURTHER RESOLVED, that Clarence W. Walker be, and he hereby is, elected Chairman of the Audit Committee of this Board of Directors of this Corporation, to serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until his successor shall be elected.

The next item of business was election of the Executive Committee of the Board of Directors. After discussion, the following resolutions were adopted:

RESOLVED, that Dennis I. Meyer, Kermit G. Phillips, II, H. Michael Weaver, Duane D. Daggett, Myles E. Standish and Robert A. Smith be, and they hereby are, elected to the Executive Committee of this Board of Directors, to serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until their successors shall be elected; and

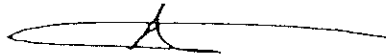
FURTHER RESOLVED, that Dennis I. Meyer be, and he hereby is, elected as Chairman of the Executive Committee of this Board of Directors of this Corporation, to serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until his successor shall be elected.

The next item of business was election of the Management Committee of the Board of Directors. After discussion, the following resolutions were adopted:

RESOLVED, that Duane D. Daggett, Myles E. Standish and Robert A. Smith be, and they hereby are, elected to the Management Committee of this Board of Directors, to serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until their successors shall be elected; and

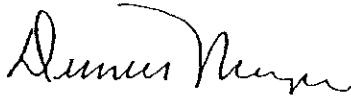
FURTHER RESOLVED, that Duane D. Daggett be, and he hereby is, elected as Chairman of the Management Committee of this Board of Directors of this Corporation, to serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until his successor shall be elected.

There being no further business to come before the Board, upon motion duly made, seconded and carried, the meeting was adjourned.



Douglas R. Muir  
Secretary

APPROVED:



Dennis I. Meyer  
Chairman

***EXHIBIT R***

OAKWOOD HOMES CORPORATION

Minutes of Meeting of Audit Committee of Board of Directors  
Held July 23, 2001

Pursuant to notification given to all members of the Audit Committee of the Board of Directors of Oakwood Homes Corporation (the "Company"), a meeting of the Audit Committee (the "Committee") was held at 2:00 p.m. on Monday, July 23, 2001 at the offices of the Company, 7800 McCloud Road, Greensboro, North Carolina.

Members of the Committee were present as follows: Clarence W. Walker, Kermit G. Phillips, II, and H. Michael Weaver. Participating via conference call was Sabin C. Streeter.

Also present from the Company at the request of the Committee were Robert A. Smith, Executive Vice President – Financial Operations, Suzanne H. Wood, Executive Vice President and Chief Financial Officer, Duane D. Daggett, President and Chief Executive Officer, and during a certain portion of the meeting, Douglas R. Muir, Executive Vice President, Secretary and Treasurer and Wallace C. Tyser, Director of Compliance. Timothy G. Morgan, Charles L. Melman and Stephen P. Jackson of PricewaterhouseCoopers LLP (PwC) were also present; and Michael J. Stork with PwC participated via conference call.

Mr. Walker, Chairman of the Committee, presided and called the meeting to order. Gwendalyn C. Scott, Human Resources Manager, acted as Secretary.

Minutes of the April 19 and April 25, 2001 meetings of the Committee were approved as distributed.

The Committee was advised that as a result of a Comment Letter from the Securities and Exchange Commission regarding fiscal 1999 and 2000 annual and quarterly financial statements, the contents of which appeared to be relatively minor in nature, the Company has amended the 10-Q for the period ending March 31, 2001 to reflect the additional historical disclosures requested by the Commission.

Ms. Wood led a review of the Amended Corporate Disclosure Policy (Policy). The Committee suggested one minor change. On the third page under the section "Distributing analysts' report" the Committee agreed to amend the last sentence in that section to now read: However, upon request, the company will provide the names and addresses of all analysts who follow the company as shown on First Call. Subject to this change, Mr. Weaver moved that the Policy be adopted, Mr. Phillips seconded and the motion unanimously carried.

The next topic of discussion was an annual report to the Committee given by Wallace C. Tyser, Jr., Director of Compliance for Oakwood Acceptance Corporation (OAC), relating to legal and regulatory requirements and internal policies and procedures concerning loan origination and services. The report was discussed in detail and Mr. Tyser addressed various questions by the Committee. The Committee agreed to place on the agenda of the next day's Board of Directors meeting a discussion regarding a possible name change for OAC. The

Committee asked that by its next Committee meeting Candy H. Grose, Vice President of Loan Origination and Risk Review, provide a report on the Compliance function for which she is responsible to include the number of people in this department, their areas of responsibility and the general results of their Compliance testing.

Ms. Wood then conducted a review of the preliminary results of operations and balance sheet for the quarter ending June 30, 200, which included a summary of impairment charges during this period. An in depth discussion ensued. Ms. Wood was asked to include the EBITDA calculation in future financials. The manufactured housing industry and its continuing deteriorated state were discussed. PwC has substantially completed their review of the quarter. No major adjustments for the quarter were anticipated. A status report was given on the relationships with our banks regarding the financial covenants for our line of credit. Management informed the Committee that preliminary results indicate that the Company may not be in compliance with certain debt covenants. If it is determined that that is the case, management will seek to obtain waivers and modifications for the current period and for the remainder of fiscal 2001. The press release on the results of the quarter and the analysts' conference call are scheduled to take place Thursday, July 26, 2001.

There followed a discussion concerning the REMIC default and recovery rate sensitivity analysis. Management responded to various questions by the Committee.

The next topic of discussion was a review of the Company's loan extension policy and procedures. Ms. Wood led the group through an analysis of the various situations that would qualify for loan extension. The Committee then reviewed an analysis of the loan assumptions program and a report on the methodology associated with the REMIC gain (or loss) on sale calculation. Mr. Walker asked that Ms. Wood provide the Committee with a list of all policies that we presently have in written form.

Ms. Wood then presented a complete summary of REMIC valuations. The recent B-piece sale in July was discussed, as was the timing of the potential sale of the remaining B-pieces and, specifically, an offer in aggregate from an unnamed buyer. The Committee agreed to continue discussions on the latter at the Board of Directors meeting the following day. It is anticipated that another securitization may take place in August. The Committee asked PwC what procedures they performed as part of their assessment of going concern relative to REMIC market conditions and the possibility that the Company be unable to access the market. Specifically, the Committee is interested in an analysis of the market today and its anticipated direction in the future, to include a sensitivity report regarding Oakwood and the impact to the Company should it go for an extended period without the funding from a securitization's deal. PwC noted that they conferred with Doug Muir and First Boston relative to the market and the marketability of Oakwood's paper relative to perceptions of the Company's ability to continue as a going concern. It was noted that the forecast and stress case assumptions reviewed in the FY 2000 audit included consideration of the percentage of par which the Company would be able to receive in Securitizations transactions and the consequences of a short term disruption in the market. An underlying assumption in the Company's forecasts is the ability to access the market and receive approximately 95% of par. The Committee asked to be informed of PwC's considerations of this assumption as part of their FY 2001 audit.

PwC then presented information regarding the process it will follow in order to form a conclusion on the type of opinion to be rendered during its audit of the September 30, 2001 financials, including authoritative literature and guidance governing auditors' work, industry and Company-specific factors that could influence the conclusion, timing of the review and information needed from the Company. A lengthy discussion followed. PwC will closely monitor Company developments during the fourth quarter and be in close contact with Management in preparations for the evaluation of the financial statements and audit opinion.

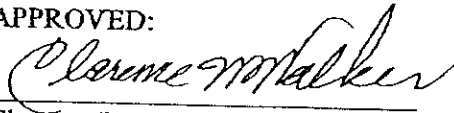
Deferred to the next Committee meeting was the topic of Asset Protection in terms of other areas in the Company that are exposed to risk in light of the most recent reorganization of the Internal Audit function.

Company representatives were excused from the meeting, whereupon the committee went into Executive session with the outside auditors.

There being no further business to come before the meeting, motion was made, seconded and carried that it be adjourned.

  
Gwendalyn C. Scott, Secretary

APPROVED:

  
Clarence W. Walker, Chairman

***EXHIBIT S***



OAKWOOD HOMES CORPORATION

Minutes of the Meeting of the Board of Directors  
Held Tuesday, July 24, 2001

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Pursuant to written notice mailed to all of the Directors of Oakwood Homes Corporation (the "Corporation"), a meeting of the Board of Directors of the Corporation (the "Board") was held on Tuesday, July 24, 2001 at the offices of the Corporation located at 7800 McCloud Road, Greensboro, North Carolina.

Members of the Board present at the meeting were as follows: Duane D. Daggett, Robert A. Smith, H. Michael Weaver, Myles E. Standish, Dennis I. Meyer, Sabin C. Streeter, Kermit G. Phillips, II and Clarence W. Walker; Francis T. Vincent participated by means of telephonic conference call such that all directors could simultaneously hear each other.

Dennis I. Meyer, Chairman of the Corporation, called the meeting to order and served as Chairman of the meeting. Douglas R. Muir, Secretary of the Corporation, served as Secretary of the meeting. Also present at the request of the Chairman were Suzanne H. Wood, Executive Vice President and Chief Financial Officer of the Corporation, and Stephen K. Rhyme and Debra M. Ingraham of Kennedy Covington Lobdell & Hickman, L.L.P.

The Chairman declared that a quorum was present and the meeting was therefore duly organized and constituted for the transaction of business.

The first item of business was a briefing from Mr. Muir on a proposed securitization of the Corporation's inventory of subordinated REMIC securities. Mr. Muir noted that the securitization would also include the securitization of substantially all the retained residual or interest-only securities owned by the Corporation; would result in the creation of an approximately \$111 million bond to be sold at a dollar price of about 55% of par for an effective yield of approximately 20%; would involve a guarantee by the Corporation of timely payment of principal and interest on each of the subordinated securities; and would include granting to the investor a put option pursuant to which the investor could require the Corporation to purchase the new \$111 million bond in ten years at its then outstanding principal balance plus accrued interest. It was the unanimous consensus of the Board that the transaction be completed. There followed a general discussion of broader corporate liquidity and cash flow issues.

The next item of business was a report from Mr. Standish on the plan discussed at the last Board meeting to substantially reduce the size of the retail organization. Mr. Smith distributed copies of the presentation materials regarding the plan that had been used at management's meeting with the Corporation's bank group on Friday, July 20. Following discussion, the Board unanimously approved the retail restructuring plan.

The next item of business was a report by Mrs. Wood on the results of the Corporation's operations for the quarter ended June 30, 2001. A discussion ensued, following which Mrs. Wood left the meeting.

The next item of business was a report from Mr. Standish on current industry conditions.

All persons other than the non-employee directors left the meeting. The non-employee directors then discussed succession planning for top management of the Corporation. Following that discussion, Mr. Vincent left the meeting.

The next item of business was a discussion, led by Mr. Walker assisted by Mr. Rhyne, concerning potential renewal of the shareholder rights agreement which was scheduled to expire shortly. After discussion, upon motion duly made and seconded, the following preambles and resolutions were adopted:

WHEREAS, the Board of Directors of the Corporation has determined that continuation of the Shareholder Protection Rights Agreement dated August 8, 1991 (the "Rights Agreement") is in the best interests of the Corporation and its shareholders, inasmuch as the Rights Agreement is designed to encourage potential acquirors to deal directly with the Corporation's Board of Directors, to provide the Board of Directors, in such circumstances, with an opportunity to consider alternatives to and examine the merits of an acquisition proposal, and to enhance the Board's ability to oppose a takeover offer that is inadequate, unfair, abusive or otherwise not in the best interests of the shareholders of the Corporation;

WHEREAS, the Rights Agreement expires by its terms on August 22, 2001, and the Board of Directors believes that amending the Rights Agreement to extend the expiration date and revise certain other provisions of the Rights Agreement that the Board has determined to be in the best interest of the Corporation and its shareholders, substantially in the form as attached hereto as Exhibit A (the "Amendment"), will further the objectives set forth in the preceding preamble; and

WHEREAS, the Rights Agreement provides that it may be amended without the approval of the rights holders, including to extend the Expiration Time, prior to the occurrence of a Flip-Over or Flip-In Event (as such terms are defined in the Rights Agreement)

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves and confirms in all respects the Amendment;

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized and directed to execute the Amendment on behalf of the Corporation;

FURTHER RESOLVED, that the officers of the Corporation are hereby authorized, jointly and severally, in the name and on behalf of the Corporation, to take all such action, including filing an amendment to the

registration statement on Form 8-A filed by the Corporation on August 23, 1991, and to execute all such documents as they may deem necessary or appropriate in connection with the Amendment in order to comply with any federal, state and local laws, including without limitation the Securities Exchange Act of 1934, as amended;

FURTHER RESOLVED, that the officers are hereby authorized and directed, for and in the name and on behalf of the Corporation, to execute personally or by attorney-in-fact and cause to be filed with the Securities and Exchange Commission ("SEC") any amendments to any registration statements under the Securities Act of 1933, as amended (the "Securities Act"), for the registration of the Rights and of the shares of stock issuable upon exercise of the Rights, at such time as they deem such registration to be necessary and appropriate, and thereafter to execute personally or by attorney-in-fact and to cause to be filed any amended registration statement or registration statements and amended prospectus or prospectuses, or amendments or supplements to any of the foregoing, and to cause said registration statement and any amendments thereto to become effective in accordance with the Securities Act and the general rules and regulations of the SEC thereunder;

FURTHER RESOLVED, that the officers are hereby authorized, jointly and severally, in the name and on behalf of the Corporation, to execute and file such application or applications, and amendments and supplements thereto, and take such other action as may be necessary to cause the Rights and the shares of stock issuable upon exercise of the Rights to be listed on the New York Stock Exchange and on any other stock exchanges deemed by them to be appropriate, and that the officers, and each of them hereby is, authorized to appear before the Securities and Exchange Commission and the New York Stock Exchange, and to execute such papers and agreements as may be necessary to conform with the requirements of the Securities and Exchange Commission and the New York Stock Exchange and to effectuate such listing and registration;

FURTHER RESOLVED, that the officers of the Corporation are hereby authorized and empowered, jointly and severally, for and in the name and on behalf of the Corporation, to execute and deliver any and all certificates, agreements and other documents, take any and all steps and do any and all things which they, or any of them, may deem necessary or advisable in order to effectuate the purposes of each and all of the foregoing resolutions; and

FURTHER RESOLVED, that any actions taken by such officers prior to the date of the foregoing resolutions adopted at this meeting that are within the authority conferred hereby are hereby ratified, confirmed and approved as the act and deed of the Corporation

The next item of business was a report from Mr. Walker on the Audit Committee meeting held the preceding day. Mr. Walker reported that the Committee had reviewed the Corporation's results of operations for the quarter ended June 30, 2001; been advised that there was a possibility that the restructuring charge expected to be recorded in the fourth quarter relating to the restructuring of the retail operations may include a write off of goodwill associated with underperforming sales centers; received a report from Mr. Tyser of the Corporation's consumer finance business on regulatory compliance in that business; reviewed a report on the sensitivity of the valuation of the Corporation's retained REMIC interests to changes in default and recovery rate assumptions; and discussed issues associated with the going concern analysis to be conducted by the independent accountants in connection with the annual audit of the Corporation's financial statements.

The next item of business was a report from Mr. Meyer, who stated that Mr. Lee Posey, Chairman of Palm Harbor Homes, had expressed interest in potentially acquiring the Corporation's retail and manufacturing operations in the Southwest and Pacific Northwest. Mr. Standish noted that the retail restructuring currently in process of finalization included closure of underperforming retail locations in these markets. Mr. Standish stated that after the retail restructuring was announced, he would contact Mr. Posey to determine the extent of Mr. Posey's interest in the Corporation's operations in these areas.

Mr. Walker left the meeting.

Mr. Meyer next informed the Board that he had been informed by Mr. Schipke that because of the significant logistical problems in traveling from Mr. Schipke's home to Greensboro, Mr. Schipke did not intend to stand for reelection to the Board at the 2002 annual meeting of shareholders. Mr. Meyer stated that he believed that for the time being it was not essential that Mr. Schipke's seat be filled, and the Board agreed with that judgment.

The next item of business was a report from Mr. Standish on the retail organization and the effects of the retail restructuring on the organization. Mr. Standish indicated that he intended to reduce the number of geographic regions in the retail operating structure from ten to eight as a consequence of the restructuring.

The next item of business was a report from Mr. Standish on the Corporation's manufacturing operations and the effects of the retail restructuring on those operations. Mr. Standish noted that the stores to be closed in the restructuring represented only about 8% of the Corporation's total unit volume, and that the Corporation had in June decided to close one of the Hillsboro, Texas plants. After giving effect to the Hillsboro closing, there exists a gap of about 3,000 to 4,000 floors between existing manufacturing capacity and preliminary estimates of fiscal 2002 floor needs, and that the stores to be closed in the restructuring would approximately eliminate that gap. Mr. Standish noted that the Pulaski, Tennessee and Moultrie, Georgia plants would bear the brunt of the effects of the retail restructuring; he believed volumes would remain sufficient to operate Pulaski at a profit, but Moultrie was questionable and would require ongoing monitoring. Mr. Standish concluded with a general overview of the wholesale sales environment.

The next item of business was a report from Mr. Smith on the consumer finance operations and how the retail restructuring would likely affect the consumer finance business.

The next item of business was a report from Mr. Smith on the status of new credit facilities and liquidity issues in light of the pending securitization of retained REMIC securities, including the proposed servicing advance facility, revolver and a sale/leaseback or mortgage on the McCloud Road building.

The next item of business was implementation of the management succession plan discussed earlier by the non-employee directors. Upon motion duly made and seconded, the following resolutions were adopted:

RESOLVED, that Myles E. Standish be, and he hereby is, elected President and Chief Executive Officer of the Corporation to serve, subject to the provisions of the Bylaws of the Corporation, until his successor is duly elected and qualified; and

FURTHER RESOLVED, that Duane D. Daggett be, and he hereby is, elected Vice Chairman of the Board of Directors of the Corporation to serve, subject to the provisions of the Bylaws of the Corporation, until his successor is duly elected and qualified.

Mr. Meyer then thanked Mr. Daggett for his efforts and accomplishments during his tenure as Chief Executive Officer, noting that Mr. Daggett had been an agent of change at a time when the Corporation needed those skills. Mr. Meyer presented Mr. Daggett with a memento from the Board commemorating Mr. Daggett's service.

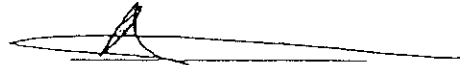
The next item of business to come before the meeting was consideration of the composition of the Management Committee of the Board of Directors of the Corporation. Following discussion, upon motion duly made and seconded, the following preambles and resolution were adopted.

WHEREAS, Section 3.8 of the Bylaws of the Corporation provides that members of committees of the Board of Directors serve at the pleasure of the Board; and


WHEREAS, it is in the best interest of the Corporation that the membership of the Management Committee of the Corporation be reconstituted.

NOW, THEREFORE, BE IT RESOLVED, that the membership of the Management Committee be reconstituted to consist solely of Myles E. Standish and Robert A. Smith, who shall serve, subject to the Bylaws of this Corporation, until the next annual meeting of this Board of Directors and until their successors shall be elected.

There being no further business to come before the Board, upon motion duly made, seconded and carried, the meeting was adjourned.

  
Douglas R. Muir  
Secretary

APPROVED:

  
Dennis I. Meyer  
Chairman

***EXHIBIT T***

OAKWOOD HOMES CORPORATION

Minutes of the Meeting of the Board of Directors  
Held Thursday, November 15, 2001

Pursuant to written notice mailed to all of the Directors of Oakwood Homes Corporation (the "Corporation"), a meeting of the Board of Directors of the Corporation (the "Board") was held on Thursday, November 15, 2001 at the offices of the Corporation located at 7800 McCloud Road, Greensboro, North Carolina.

Dennis I. Meyer, Chairman of the Corporation, called the meeting to order and served as Chairman of the meeting. Douglas R. Muir, Secretary of the Corporation, served as Secretary of the meeting.

Members of the Board present at the meeting were as follows: Dennis I. Meyer, Kermit G. Phillips, II, Roger W. Schipke, Clarence W. Walker, Duane D. Daggett, Myles E. Standish, Robert A. Smith and Sabin C. Streeter. Also present at the request of the Chairman was Suzanne H. Wood, Chief Financial Officer of the Corporation.

The first item of business was a review by Mrs. Wood of the Corporation's results of operations for the fourth quarter and year ended September 30, 2001. Questions were asked and answered.

Messrs. Tim Morgan, Chuck Melman and Matt Brockwell of PricewaterhouseCoopers, LLP, the Corporation's independent accountants, joined the meeting and made a presentation concerning the "going concern" analysis the accountants were undertaking in connection with their audit of the Corporation's consolidated financial statements for the year ended September 30, 2001. The presentation discussed, among other things, the accountants' approach to the analysis and the inherent uncertainties involved therein. Significant discussion followed the presentation, after which the independent accountants left the meeting.

The next item of business to come before the meeting was the approval of the minutes of earlier meetings of the Board. Upon motion duly made, seconded and carried, the Board approved the minutes of meetings held on April 19, June 8, July 24 and August 20, 2001.

The next item of business was authorization of officers of the Corporation to repurchase reset debentures issued by the Corporation in 1992. Holders of such debentures have the option to require the Corporation to repurchase them at par on June 1, 2002, and from time to time the Corporation may have the opportunity to repurchase some of the debentures at a discount to par. After discussion, the following resolution was adopted:

BE IT RESOLVED, that Myles E. Standish, Robert A. Smith, Douglas R. Muir and Suzanne H. Wood be, and each of them hereby is, authorized to cause the Corporation to repurchase any of the Corporation's outstanding Class A and



Class B Reset Debentures due 2007 at such prices and on such terms and conditions as they deem appropriate and in the best interests of the Corporation.

The next item of business was a report by Mr. Standish on conditions in the manufactured housing industry and the effects of the September 11, 2001 events on the Corporation's business.

The next item of business was a review by Mrs. Wood of the Corporation's results of operations for October 2001. Mr. Standish commented on the results, and discussion followed.

The next item of business was a report by Mr. Standish on the progress to date on the sale and closure of retail sales centers and an update on potential sales of manufacturing facilities. Mr. Standish reviewed the status of each of the currently operating manufacturing facilities in terms of order flow and of the wholesale business generally. A discussion followed.

The next item of business was a report by Mr. Smith on the status of the pending Foothill loan transaction, the resecuritization of subordinated ABS securities closed in August and the upcoming regular loan securitization.

The next item of business was a report from Mr. Standish on the status of the Corporation's modular housing business and the possibilities for expanding that business.

The next item of business was a briefing by Mr. Smith on a potential purchase of a portfolio of manufactured housing consumer loans from IndyMac, a former consumer lender to the manufactured housing industry which has exited the business. Mr. Smith indicated that he did not consider it likely that the portfolio could be acquired on a basis that would be attractive to the Corporation. Following this briefing, Mr. Smith updated the Board on the status of incoming loan repossessions and the number of problem loans being placed into the loan assumption program.

The next item of business was a report from Mr. Walker on the Audit Committee meeting held earlier in the day. Mr. Walker reported that there were no items of business taken up by the Committee which he believed should be reported to the Board.

The next item of business was a briefing by Mr. Meyer on the proposed separation financial arrangements with Mr. Daggett. Mr. Meyer proposed that Mr. Daggett receive a payment of \$500,000 cash and that his existing stock options and stock appreciation rights be terminated and replaced with a phantom stock plan covering the same number of shares as did the terminated options and SARs. The phantom stock award would be payable in cash in an amount equal to (1) the excess, if any, of the average price of the Corporation's common stock for the 15 trading days ending December 31, 2004 over \$3.15 per share with respect to 24,000 notional shares; (2) the excess, if any, of the average price of the Corporation's common stock for the 15 trading days ending December 31, 2004 over \$7.05 per share with respect to 12,000 notional shares; and (3) the excess, if any, of the average price of the Corporation's common stock for the 15 trading days ending July 31, 2002 over \$15.94 per share with respect to 5,000 notional shares. In addition, the Corporation would look into paying for Mr. Daggett's health insurance and certain life insurance premiums through

December 31, 2004, but this was not a commitment. After discussion, upon motion duly made and seconded, the Board approved the foregoing, with Mr. Daggett abstaining from the vote.

The next item of business to come before the meeting was an update by Mr. Standish on the Bloomquist defalcation matter.

The next item of business was consideration of compensation for non-employee directors. After discussion, upon motion duly made and seconded, the following preamble and resolutions were adopted:

WHEREAS, it is desirable to set the compensation of directors of the Corporation.

NOW, THEREFORE, BE IT RESOLVED, that the directors of the Corporation who are not also employed by the Corporation receive compensation as directors in the amount of \$9,000 per quarter and that they also receive a fee of \$1,000 for each meeting of the Board of Directors attended, \$1,500 for each committee meeting of the Board of Directors attended and not held on the same day as a meeting of the Board of Directors, and \$500 for each meeting participated in by telephone conference call; and

FURTHER RESOLVED, that the directors of the Corporation who are not also employed by the Corporation and who are chairmen of committees of the Board of Directors receive compensation in the amount of \$1,000 per quarter.

The next item of business was consideration of appointment of independent accountants for the Corporation for fiscal 2002. Mr. Walker reported that it was the recommendation of the Audit Committee that PricewaterhouseCoopers, LLP be reappointed. After discussion, upon motion duly made and seconded, the following preamble and resolution were adopted:

WHEREAS, the Audit Committee of the Board of Directors of this Corporation has recommended that PricewaterhouseCoopers LLP be appointed as certified public accountants to examine the financial statements of the Corporation and its subsidiaries for the fiscal year ending September 30, 2002.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the recommendation of the Audit Committee of this Board of Directors, PricewaterhouseCoopers LLP be, and they hereby are, appointed as certified public accountants to examine the financial statements of the Corporation and its subsidiaries for the fiscal year ending September 30, 2002, subject, however, to approval by the shareholders of this Corporation at the Annual Meeting of Shareholders to be held on January 30, 2002.

The next item of business was the election of officers of the Corporation. After discussion, upon motion duly made and seconded, the following resolution was adopted:

RESOLVED, that the following persons be, and they hereby are, elected to the offices set forth opposite their respective names below, each to serve, subject to the provisions of the Bylaws of the Corporation, until his or her respective successor is duly elected and qualified:

<u>Name</u>	<u>Office</u>
Myles E. Standish	President, Chief Executive Officer and General Counsel
Robert A. Smith	Executive Vice President - Financial Operations and Assistant Secretary
Douglas R. Muir	Executive Vice President, Secretary and Treasurer
Suzanne H. Wood	Executive Vice President and Chief Financial Officer and Assistant Secretary
Timothy J. Graff	Executive Vice President - Customer Operations
Chris J. Paul	Senior Vice President - Information Technology
David C. Lyle	Vice President - Applications Development
Steven D. Hendershot	Vice President - Information Technology
Paul W. Macksood	Vice President - Human Resources
Lisa K. Carter	Vice President
Randelle R. Smith	Assistant Treasurer

The next item of business was designation of executive officers of the Corporation and/or its subsidiaries. After discussion, upon motion duly made and seconded, the following preamble and resolution were adopted.

WHEREAS, it is desirable and in the best interest of the Corporation, for the purpose of various filings with the Securities and Exchange Commission and for internal matters, that the Corporation determine and state its executive officers.

NOW, THEREFORE, BE IT RESOLVED, that the following persons be considered executive officers of the Corporation:

Myles E. Standish  
 Robert A. Smith  
 Douglas R. Muir  
 Suzanne H. Wood  
 Timothy J. Graff  
 Macy A. Foster  
 Michael D. Rutherford  
 Donald C. Davis

The next item of business to come before the meeting was nomination of directors and designation of proxies for the 2002 annual meeting of shareholders. After discussion, upon motion duly made and seconded, the following preambles and resolutions were adopted:

WHEREAS, the Board of Directors has designated January 30, 2002 as the date of the 2002 Annual Meeting of Shareholders and December 7, 2001 as the record date for said Annual Meeting; and

WHEREAS, Section 3.2 of the Bylaws of the Corporation provides that the number of members of the Board of Directors shall be a maximum of fifteen and a minimum of seven with the exact number fixed by resolution of the Board of Directors; and

WHEREAS, it is appropriate for the Board of Directors to (i) designate individuals to be suggested to the shareholders as proxies for the 2002 Annual Meeting of Shareholders, (ii) fix the number of members of the Board of Directors, (iii) name the nominees for election as Directors and (iv) direct the mailing of the Annual Report to Shareholders, Proxy Statement and Notice of Annual Meeting.

NOW, THEREFORE, BE IT RESOLVED, that Myles E. Standish and Robert A. Smith, and each of them and their respective substitutes, be, and they hereby are, designated as the individuals to be suggested to the shareholders of the Corporation as proxies for such shareholders at the Annual Meeting of Shareholders to be held Wednesday, January 30, 2002 and any adjournment thereof, and that the names of said individuals also be included in the form of proxy to be solicited by the Board of Directors of this Corporation for use at said Annual Meeting of Shareholders and any adjournment thereof; and

FURTHER RESOLVED, that the number of members of the Board of Directors be fixed at eleven; and

FURTHER RESOLVED, that the Board of Directors proposes that Sabin C. Streeter be nominated for election to membership of the Board of Directors of the Corporation at the Annual Meeting of Shareholders to be held on January 30, 2002 for a term ending in 2005, and that there be three vacancies on the Board to be filled by this Board of Directors or the shareholders when appropriate candidates for the vacancies are identified; and

FURTHER RESOLVED, that this Corporation's Annual Report to Shareholders for the fiscal year ended September 30, 2001, and the Notice of the 2002 Annual Meeting, Proxy Statement and form of proxy be mailed on December 26, 2001 or as soon thereafter as possible, to all of the shareholders of record of this Corporation on December 7, 2001.

The next item of business was the introduction by Mr. Meyer of the following resolutions:

WHEREAS, Roger W. Schipke has served as a director of the Corporation since 1996; and

WHEREAS, for reasons unrelated to his service as a director of the Corporation Mr. Schipke has decided not to stand for reelection to the Board of Directors.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors recognizes the contributions of Roger W. Schipke as a director of the Corporation; and

FURTHER RESOLVED, that the Board of Directors expresses its thanks and appreciation for Roger W. Schipke's dedicated and thoughtful service to the Corporation as a member of the Board of Directors of the Corporation, and

FURTHER RESOLVED, that the Secretary of the Corporation is hereby directed to place the foregoing preambles and resolutions in the permanent minute book of the Board of Directors of the Corporation.

The other directors joined Mr. Meyer in expressing appreciation to Mr. Schipke and, upon motion duly made and seconded, unanimously adopted the resolutions.

The next item of business was the introduction by Mr. Meyer of the following resolutions:

WHEREAS, Duane D. Daggett has served as President, as Chief Executive Officer and as a director of the Corporation; and

WHEREAS, Mr. Daggett has accomplished the objectives set out for him upon his election as Chief Executive Officer and has relinquished the office of President and Chief Executive Officer; and

WHEREAS, Mr. Daggett, having completed his objectives, has decided not to stand for reelection to the Board of Directors.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors recognizes the contributions of Duane D. Daggett as President, Chief Executive Officer and as a director of the Corporation; and

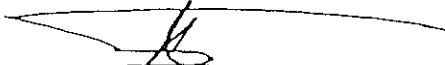
FURTHER RESOLVED, that the Board of Directors expresses its thanks and appreciation for Duane D. Daggett's dedicated and thoughtful service to the Corporation as a member of the Board of Directors of the Corporation, and for his efforts as an agent of change in leading the Corporation in difficult circumstances; and

FURTHER RESOLVED, that the Secretary of the Corporation is hereby directed to place the foregoing preambles and resolutions in the permanent minute book of the Board of Directors of the Corporation.

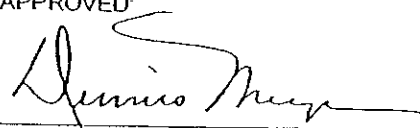
The other directors joined Mr. Meyer in expressing appreciation to Mr. Daggett and, upon motion duly made and seconded, unanimously adopted the resolutions.

The last item of business was a report to the Board from Mr. Meyer regarding a call he had received from representatives of a firm called Unaprop, who had expressed interest in the Corporation's business; Mr. Meyer reported that he had agreed to meet with the representatives after Thanksgiving and would report to the Board the substance of that meeting.

There being no further business to come before the Board, upon motion duly made, seconded and carried, the meeting was adjourned.

  
\_\_\_\_\_  
Douglas R. Muir  
Secretary

APPROVED:

  
\_\_\_\_\_  
Dennis A. Meyer  
Chairman

***EXHIBIT U***

OAKWOOD HOMES CORPORATION

Minutes of the Meeting of the Board of Directors  
Held Monday, May 6, 2002

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Pursuant to written notice mailed to all of the Directors of Oakwood Homes Corporation (the "Corporation"), a meeting of the Board of Directors of the Corporation (the "Board") was held on Monday, May 6, 2002 at the offices of the Corporation located at 7800 McCloud Road, Greensboro, North Carolina.

Dennis I. Meyer, Chairman of the Corporation, called the meeting to order and served as Chairman of the meeting. Douglas R. Muir, Secretary of the Corporation, served as Secretary of the meeting.

The following members of the Board attended the meeting in person: Dennis I. Meyer, Kermit G. Phillips, II, Clarence W. Walker, H. Michael Weaver, Myles E. Standish and Robert A. Smith. In addition, Francis T. Vincent, Jr. and Sabin C. Streeter participated by means of a telephonic conference call such that all directors could simultaneously hear each other. Also present at the request of the Chairman was Suzanne H. Wood, Chief Financial Officer of the Corporation.

The first item of business was a review by Mrs. Wood of the Corporation's results of operations for the quarter and year-to-date periods ended March 31, 2002. Questions were asked and answered.

The next item of business was a report from Mr. Standish on industry conditions as well as the Corporation's manufacturing and retail operations, including traffic levels at retail and his sense of the level of business at the Corporation's independent dealers. A discussion ensued.

The next item of business was a report from Mr. Smith on the Corporation's consumer finance operations, particularly the status of repossession and loan assumption inventories as well as the rate of incoming repossessions and assumptions. A discussion ensued.

Mr. Vincent left the meeting.

The next item of business was a report from Mr. Walker on the recent Audit Committee meetings. Mr. Walker reported that no significant items had been discussed at the meeting held two weeks earlier to review the results of operation for the second quarter, and that there were no items appearing on the independent accountants' schedule of unadjusted errors. Mr. Walker reported that at the meeting held earlier on May 6, the Committee had reviewed the valuation of assets and liabilities associated with the Corporation's loan securitizations and had received a report on process and personnel improvements that had recently been implemented to prevent the recurrence of a recently discovered accounting error; the Committee had concluded that the magnitude of the error was not such that any restatement of previously reported result was necessary. Mr. Walker also reported the Committee reviewed management's responses to the internal control recommendations made by the



independent accountants, noting that the recommendations did not concern material items and that in any case management generally agreed with the recommendations and was taking steps to implement them. In addition, the Committee received a report from the independent accountants on their plans for the audit of the Corporation's financial statements for 2002. Finally, Mr. Walker reported that the Committee had reexamined its charter and reaffirmed its appropriateness, but would continue to investigate corporate best practices in this area.

The next item of business was a discussion of the Corporation's liquidity outlook and credit facilities, including reports from management on the Foothill revolving credit facility and the amount and purpose of letters of credit supported by the Foothill facility, the potential additional financing facility for servicing advances, the current ABS market and the proposed sale of subordinated asset-backed securities into the Lotus resecuritization transaction, and a potential transaction which might be undertaken under which the Corporation could offer to exchange some or all of the Corporation's outstanding senior notes due in 2004 for a combination of cash and notes identical to the senior notes due in 2009, the last of these items being a proposal crafted by Credit Suisse First Boston in response to management's inquiry of CSFB as to possible ways to refinance the 2004 senior notes.

Mr. Muir was excused.


The next item of business was a discussion of the Oakwood Homes Corporation Director Deferral Plan. After discussion, the following preamble and resolution were adopted:

WHEREAS, it is in the best interests of the Corporation and its shareholders that the Oakwood Homes Corporation Director Deferral Plan be terminated.

NOW, THEREFORE, BE IT RESOLVED, that the Director Deferral Plan be terminated as of May 6, 2002; and


FURTHER RESOLVED, that the appropriate officers of the Corporation are hereby authorized and directed to cause the accounts of participants in the plan to be paid to them in a single lump sum as soon as practicable.

There being no further business to come before the Board, upon motion duly made, seconded and carried, the meeting was adjourned.



Douglas R. Muir  
Secretary

APPROVED:



Dennis I. Meyer  
Chairman

***EXHIBIT V***

OAKWOOD HOMES CORPORATION

Minutes of the Meeting of the Board of Directors  
Held Monday, July 29, 2002

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Pursuant to written notice mailed to all of the Directors of Oakwood Homes Corporation (the "Corporation"), a meeting of the Board of Directors of the Corporation (the "Board") was held on Monday, July 29, 2002 at the offices of Baker & McKenzie located in New York City.

Dennis I. Meyer, Chairman of the Corporation, called the meeting to order and served as Chairman of the meeting. Douglas R. Muir, Secretary of the Corporation, served as Secretary of the meeting.

Members of the Board present at the meeting were as follows: Dennis I. Meyer, Kermit G. Phillips, II, Clarence W. Walker, H. Michael Weaver, Francis T. Vincent, Jr., Myles E. Standish, Robert A. Smith and Sabin C. Streeter. Also present at the request of the Chairman was Suzanne H. Wood, Chief Financial Officer of the Corporation.

The first item of business was a review by Mrs. Wood of the Corporation's results of operations for the third quarter and year-to-date periods ended June 30, 2002. Questions were asked and answered.

The next item of business was a report from Mr. Standish on industry conditions, including the level of industry shipments to dealers, the financial difficulties at Conseco, Inc., weak employment levels and high bankruptcies in many of the Corporation's markets and the overhang of repo inventories (both the Corporation's and other lenders') in most markets.

The next item of business was a discussion of the Corporation's liquidity position, its access to capital, the problem of large numbers of non-performing loans and related repossessions and potential solutions to the ongoing performance and financial issues facing the Corporation.

The next item of business was a report by Mr. Standish on the recent meeting between himself, Mr. Smith, Mr. Muir and two representatives of Credit Suisse First Boston with representatives of the investor code-named LOTUS, who is a large investor in non-investment grade asset-backed securities issued by REMIC trusts formed by a subsidiary of the Corporation and a large investor in the Corporation's senior notes.

Mr. Standish next briefed the Board on the steps taken by management in preparing for any potential financial reorganization of the Corporation that might be required. While management has not concluded that such steps are necessary, Mr. Standish reported that, as previously disclosed to the Board, management believed preparedness for such action was prudent so that it could be well managed if such action became necessary, and that he had undertaken discussions with Credit Suisse First Boston about retaining that firm as a financial advisor, as well as considered other potential financial advisors.

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A thorough discussion ensued. Following discussion, the Board assigned to the Executive Committee of the Board the task of consulting with management to develop a list of alternative strategies to deal with the financial issues facing the Corporation (including guarantees of asset-backed securities, the senior notes and the potential further shortfalls in servicing fee receipts as a consequence of increasing credit losses) with a view toward developing a comprehensive solution to those issues. The Board directed that management return with a preliminary action plan at a Board meeting to be held on August 19.


The next item of business was a report from Mr. Standish on the Corporation's housing business, both retail and wholesale, including the reasons the wholesale business appeared to be performing better than the industry in terms of sales, changes to retail salesperson and general manager compensation plans recently implemented or to be implemented on October 1, and planned headcount reductions in the retail sales force to better align headcount with business volume.

The next item of business was a report from Mr. Walker on the Audit Committee meeting held earlier in the day. Mr. Walker reported that the principal item of discussion was the "going concern opinion" issues that were being addressed by the Corporation's independent accountants and by management. Mr. Walker also reported that the Committee received several reports concerning compliance with regulations and policy and procedure in the consumer finance business, none of which noted any areas of particular concern.


The next item of business was consideration of an amendment to the Corporation's 401(k) plan. Following discussion, the following resolution was adopted:

BE IT RESOLVED, that the Instrument of Amendment to the Oakwood Savings Plan attached hereto as Exhibit A be, and it hereby is, adopted.

There being no further business to come before the Board, upon motion duly made, seconded and carried, the meeting was adjourned.

  
Douglas R. Muir  
Secretary

APPROVED:

  
Dennis I. Meyer  
Chairman

***EXHIBIT W***

**MINUTES OF THE MEETING  
OF THE BOARD OF DIRECTORS  
OAKWOOD HOMES CORPORATION, A NORTH CAROLINA CORPORATION  
NOVEMBER 12, 2002**

A meeting of the Board of Directors of Oakwood Homes Corporation was held on November 12, 2002 at the offices of the corporation in Greensboro, North Carolina. Present at the meeting were Directors:

Myles E. Standish  
Robert A. Smith  
Sabin C. Streeter  
Dennis I. Meyer,  
Clarence W. Walker  
Kermit G. Phillips, II  
and, by telephone, H. Michael Weaver

Also present at the meeting were:

Suzanne H. Wood, Chief Financial Officer  
Douglas R. Muir, Executive VP, Secretary & Treasurer  
Fiachra O'Driscoll, Managing Director, Credit Suisse First Boston  
Jared Felt, Investment Banker, Credit Suisse First Boston  
Robert J. Dehney of Morris, Nichols, Arsht & Tunnell, Delaware Bankruptcy Counsel,  
and C. Richard Rayburn of Rayburn, Cooper & Durham, Special Insolvency Counsel,  
who acted as Secretary of the meeting

**Management's Report**

The meeting began with a report from President Standish on the current status of the Company's plans with respect to a prospective Chapter 11 reorganization. Mr. Standish reported:

1. The Company is preparing to file a Chapter 11 reorganization proceeding in Delaware on Friday, November 15, 2002.
2. The Company is preparing for the closing of plants outlined in its restructuring plan on Thursday, November 14, 2002.
3. The Company is planning for the closing of approximately 75 sales centers outlined in its restructuring plan on Friday, November 15, 2002.
4. With respect to the principal and interest advance due by Oakwood Acceptance Corporation, as Servicer, to various REMICs on Thursday, November 14, 2002, the advance will be made to the extent funding is available through the Prudential facility, but will not be made in cash for the approximately 20 securitizations for which no advance funding is available through the Prudential facility. As to these

securitizations, the advance may be made by offset of certain sums due to Oakwood Acceptance Corporation by the REMICs.

5. In connection with the filing, the Company is seeking a waiver from the Credit Suisse First Boston warehouse facility for new loans, which the Company expects to have by Friday.
6. The Company also expects on Friday to have a DIP facility available to fund its operations in its Chapter 11 proceeding. The leading candidate for that facility is Foothill Capital, the current lender.
7. The Company is continuing its ongoing discussions with Berkshire Hathaway and its affiliates through CSFB with a draft term sheet having been sent to Berkshire Hathaway on the evening of November 11, 2002. With respect to items 5, 6, and 7 above, the Company's goal is to announce on Friday, November 15, 2002 that it has a facility arranged with Credit Suisse First Boston for funding of its warehouse, that it has a DIP facility available with additional liquidity, and that it has the support of Berkshire Hathaway in its reorganization efforts. At this point, Jared Felt of CSFB reported that it is possible that the Company would have a non-binding Term Sheet approved that could be filed as an attachment to a Form 8-K with the SEC on Friday, November 15, 2002.
8. Two of the major floor plan lenders supplying credit to independent dealers who buy homes from Oakwood will stop credit approvals for home shipments next week. Those lenders have demanded Letters of Credit to support the Oakwood repurchase exposure and the Company presently does not have the capacity under its Foothill facility to provide those Letters of Credit.
9. The Bermuda reinsurance subsidiary, Tarheel Insurance Company, Ltd., is in a windup of its affairs. The risk ceded to Tarheel is fully collateralized by Foothill/Wells Fargo letters of credit (of which American Bankers Insurance is the beneficiary), but the Company also has self-insurance insured by Tarheel as well. The concern is that the windup of its affairs is necessary in order to avoid the appointment of a receiver or similar official by the Bermuda authorities who might either trigger an involuntary bankruptcy against Oakwood Homes Corporation (to collect Tarheel's outstanding receivable from Oakwood Homes) or otherwise interfere with the Company's reorganization efforts.

#### Counsel's Analysis

After this presentation, Mr. Standish called on Mr. Rayburn to provide a legal analysis of the Company's options with respect to a Chapter 11 reorganization. Mr. Rayburn delivered a memorandum, a copy which is attached as Exhibit A to these minutes, prepared by Rayburn, Cooper & Durham concerning the Duties of Directors of a North Carolina Corporation. Mr. Rayburn advised that, under the present circumstances of the Company, a Chapter 11 reorganization clearly offers benefit to the Company in effecting its restructuring plan through



the rejection of leases, the rejection of certain contracts, the closing of facilities, and the potential to renegotiate the servicing agreements for its REMICs. Having recommended that the Company file a Chapter 11 proceeding, Mr. Rayburn further spoke to the relative desirability of filing a "free fall" Chapter 11 proceeding (that is, one without a prior agreement with major creditors for a restructuring) versus filing a pre-agreed or pre-arranged bankruptcy proceeding with major creditor support. His advice was that the filing of a pre-arranged bankruptcy proceeding is less risky and therefore more beneficial to the preservation of the corporate enterprise and the preservation of the corporate enterprise value for all constituents within the Company, including its stockholders, than the filing of a "free fall" bankruptcy, which risks the loss of value from the enterprise and the complete elimination of any value for the most junior constituents.

Mr. Walker and Mr. Phillips asked specific questions about the necessity of filing a reorganization proceeding on Friday, November 15, 2002 as opposed to some later time. Mr. Standish answered that while the Company could possibly manage its liquidity past Friday, it could only do so for one to two weeks; that during that period, the Company could not ship to any independent dealers because of the cut-off of floor plan financing by Bombardier and Textron; and that the Company would possibly trigger WARN Act liability for the plant closings. In conclusion, Mr. Standish reported that in his opinion, the value of the enterprise would be less if the filing were delayed for a week from Friday.

Mr. Meyer observed that a Berkshire Hathaway agreement is the keystone of a plan of reorganization, but that the Company appears to have no significant leverage in negotiations with Berkshire other than the risk of a "free fall" bankruptcy. Therefore, Mr. Meyer expressed the opinion that it might be very risky to take a chance of losing the agreement with Berkshire by continuing negotiations on behalf of any specific constituency. Mr. Meyer's remark was followed by a lengthy discussion in which every Director present participated, and consensus developed around Mr. Meyer's assessment of the risk.

At the conclusion of this discussion, Mr. Streeter asked Mr. Rayburn whether the Directors had entered an area where their duty had "shifted" from one owed to shareholders to one owed to creditors under applicable law. Mr. Rayburn advised that under North Carolina law, there is no "shift" of duties recognized until the corporation makes a decision to windup or liquidate its affairs. In North Carolina, the duty always lies to the corporation, (and, through it, to its shareholders) but, upon a decision to liquidate, the duty shifts to include creditors. Mr. Rayburn distinguished this model from the Delaware construct in which the general rule is that the duty of Directors goes to shareholders, but "shifts" when the corporation enters "the zone of insolvency".

#### Credit Suisse First Boston Presentation

The Board next received a presentation from Credit Suisse First Boston presented jointly by Messrs. Felt and O'Driscoll. The text of that presentation began with a "Board Update Presentation Confidential/November 12, 2002" which is attached to these minutes as Exhibit B. The CSFB presentation began with the Executive Summary on Page 3 of the Board Update and highlighted the various issues set forth there. Mr. Felt reported that the Company's bonds had

dropped by a significant amount in trading, including drop-offs within the last week. He then described the various negotiations that had been undertaken to achieve the first goal in the restructuring plan, i.e., reaching an agreement in principle with "Lotus", the code name used for Berkshire Hathaway and its affiliates in connection with this project. Mr. Felt reported that the responses by Mr. Warren Buffett and his deputy, Mark Millard, to various offers made by the Company in previous terms sheets and telephone conversations had, in large part, adamantly opposed any equity retention programs for existing shareholders. Mr. Felt said that, in his opinion, this issue had cost time in the negotiation of the term sheet because of the reaction of Lotus to the initial proposal that the Company's shareholders retain 5% of the equity.

During the presentation, Mr. Walker asked what degree of certainty existed that the Company would be able to emerge from a bankruptcy proceeding pursuant to a plan that would afford equity to the common shareholders if it filed without an agreement with Lotus. Mr. Felt responded that in his view, and not necessarily that of CSFB, it would be extremely unlikely that equity would retain any ownership if the Company filed without a plan and that he would quantify that chance as less than 5% if the Company filed without an agreement with Lotus. Mr. Felt then continued through the presentation and pointed out, among other things, that the holdings of Lotus had increased to the point that under the restructuring plan it would now own 31% of the equity in the reorganized debtor, as illustrated on Page 13 of the Board Update. He also indicated that Citigate is going to update the list of bondholders to try to provide additional information about the extent of Lotus' holdings and the holdings of others.

After Mr. Felt finished this phase of the CSFB presentation, Mr. Streeter asked how CSFB evaluated its ability to accomplish a securitization for the Company's loans during a Chapter 11 process. Mr. O'Driscoll addressed this question by stating:

1. Being in bankruptcy is not the issue;
2. Having clarity around a plan showing where the Company is going "is" the issue;
3. The market is open for ABS paper if there is such clarity; and
4. There is generally good liquidity and enthusiasm in the ABS market today. For example, Vanderbilt is not having problems.

Mr. O'Driscoll further reported, that for the next few months, an outside servicer might be necessary to accomplish a securitization, but in the longer term, Oakwood should be able to obtain access to the market. With respect to the priority of servicing fees, Mr. O'Driscoll stated that one hundred basis points (100 bps) "senior" in the "waterfall" is more the market now, rather than the subordinated servicing fee featured in many of the Company's REMICs. Mr. O'Driscoll stated that the plan is to go to the ABS investors in a month or two, report that "here is the way Oakwood is going to operate," and attempt to persuade those investors to buy into the plan.

With respect to the objective of obtaining a debtor in-possession ("DIP") financing facility, Mr. Felt reported that contact had been made with GE, CIT, Bank of America, Back Bay

Capital and others to discuss possible DIP facilities and that the Company had met with its existing revolving credit lender, Foothill Capital. Mr. Felt expressed the opinion that most DIP financing facilities come from existing lenders, in part because it is difficult to have a "priming fight". Mr. Streeter asked, "what is a 'priming fight'?" Mr. Felt explained that the concept of "priming" is that the new lender obtains "super priority" over the pre-petition lender and therefore has a right to be paid first. He also explained that finding a lender willing to make such a loan is difficult because of the relations among the various members of the lending community.

Mr. O'Driscoll then addressed the third objective set forth in the Executive Summary of the Board Update, that of maintaining access to the warehouse facility and securitization market. He reported that under the current loan purchase facility with CSFB (referred to as the "warehouse"), the filing of a reorganization proceeding is a default. He further explained that, in connection with a request for a waiver of that default, the Credit Risk Management Division of CSFB wants to see (1) a DIP facility; (2) the absence of a "free fall" bankruptcy, i.e. a plan with Lotus; and (3) the prospect of access to the ABS market for the loans. Mr. O'Driscoll reported that a further call with the Credit Risk Management Division was scheduled for 1:00 p.m., after the Board meeting. Mr. Streeter asked whether these discussions were focused only on a waiver of the ipso facto default or also included the terms of the loan facility. Mr. O'Driscoll answered that they were focused only a waiver. Mr. Felt then discussed the possibility of a bridge facility generally, and Mr. Streeter asked when we would know about securitization. Mr. O'Driscoll reported that a servicing entity called C-Bass is looking to get into the servicing of bonds and was discussing with the Company a securitization of the existing warehouse loans in which C-Bass would buy the most junior bonds and take over servicing.

Mr. Standish then reported that the Company would run out of capacity in its current warehouse facility, if no securitization is accomplished, in approximately the middle of December.

CSFB then reported on discussions about the servicing fee issue in a meeting on Friday, November 8, 2002 with JP Morgan Chase, the trustee under most of the REMICs. That discussion was originally intended to obtain the consent of JP Morgan Chase, as trustee, to the reprioritization of the servicing fee at the "top of the waterfall" in the existing REMICs. Unfortunately, JP Morgan Chase reported that it now wants to obtain bondholder consent to any change in priority of the servicing fee, presumably as a result of recently announced litigation brought against Chase and Bank One as trustees of securitizations involving National Century. In order to accomplish the goal of increasing the priority of the servicing fee, Mr. Felt reported that the strategy would be to immediately reject the existing servicing agreements, offer interim servicing for one hundred basis points paid currently, and then attempt to negotiate a long term work-out of a servicing fee priority agreement, with JP Morgan Chase being able to obtain bondholder approval. Mr. Felt reported that the Prudential facility, which provides the servicer advance, is available to continue to provide servicer advances for the Company inside a bankruptcy proceeding. With respect to the servicing revenue issue, Mr. Felt summed it up as follows: the Company has a \$5 billion portfolio of loans it services; it is entitled to receive \$50 million in annual servicing fees at 1%; its cost for providing the servicing is approximately \$25 million; and the Company is today is receiving only approximately \$5 million in servicing fees annually.

Mr. Felt then described the sale process, which had been instituted by the Company at the request of Lotus to test the marketplace for an acquisition of the Company. Referring to the sales process update on Page 19 of the Board Update, Mr. Felt indicated that the Clayton Homes, Inc. "offer" translates into approximately \$75M plus the loans on the books of the Company; that the Kelso valuation range is \$120 - 150M; the TPG valuation range is \$275M - \$300M and the Warburg aggregate valuation range is approximately \$225 - \$275M. In response to a question by Mr. Streeter, Mr. Felt reported that all these offers were based on 100 basis points of senior servicing fee.

At approximately 10:45 a.m. the Directors took a 10-minute break and reconvened at approximately 10:55 a.m. At this point, Mr. Felt presented to the Company the term sheet that had been provided to Lotus, the "Restructuring Term Sheet Confidential/November 11, 2002", which is attached to these minutes as Exhibit C. Mr. Felt briefly went through the Term Sheet and pointed out the issue, which he had flagged before as being most difficult, i.e., the allocation of post-restructuring common equity. In order to break the ice between the Company's insistence on some value for the shareholders and Lotus' insistence on no value for the shareholders, CSFB had introduced the concept in this Term Sheet of warrants, as detailed in the Term Sheet. The warrants as specified are based upon a construction requiring the Company to achieve a \$450 million valuation, a construction which Mr. Felt observed is very common with such deals.

Mr. Walker then asked Mr. Felt whether CSFB could have a "Black-Scholes analysis performed for these warrants". Mr. Felt said that, in fact, one had been done and proceeded to hand out the Black-Scholes "warrant analysis" attached to these minutes as Exhibit D. As Mr. Felt explained the key indicators of value in a Black-Scholes analysis are the maturity date of the warrants and the volatility of the Company's underlying stock. Mr. Felt then discussed various possible assumptions and focused the Directors on assuming a volatility of 50%. Highlighting the fact that "years to maturity" appears in the left column of the sheet, he pointed out that increases in volatility cause the value of the warrants to go up. Mr. Felt suggested that using an implied initial equity value from the auction process, as well as the current market value for the Company's securities, and using this Black Scholes model as a guideline, the value indicated by this model for the warrants described in the Term Sheet would be approximately 46 cents per share, not taking into account the "flip protection" described in the Term Sheet. In addition, Mr. Felt spoke to the terms of comparable recoveries by the equity holders in companies in bankruptcy proceedings. He handed out a document called "Comparable Equity Recovery Analysis", attached to these minutes as Exhibit E, which outlines a series of outcomes for common stockholders for companies that have filed Chapter 11 proceedings over years ranging from 1991 through 2001. As he pointed out in this analysis, the warrants described in the Term Sheet would relate to approximately 9% of the fully diluted common equity, which would represent a very substantial recovery in comparison with other bankruptcy proceedings.

Mr. Felt then expressed his opinion that in the negotiation with Lotus, the risk of a "free fall" is not a very great risk at all because Berkshire Hathaway could provide DIP financing, could make a press release saying that it was going to do so, and could essentially stop the "free fall" nature of the bankruptcy immediately. Mr. Walker asked if we knew whether Mr. Buffett

had done this in the past and Mr. Felt answered, "yes" that in his experience, Mr. Buffett, i.e., Berkshire Hathaway, had in fact come in and done this in other matters. Mr. Felt expressed his opinion that the threat to Lotus is in the prioritization of the servicing fee, because that has a direct impact upon the losses sustained by the junior REMIC securities that he holds.

Mr. Phillips asked about the liquidity of the new stock and warrants. Mr. Felt responded that the estimate was that the newly issued common equity would be tradable in the market at \$10-30 per share, and that it would be listed in the NYSE or NASD or some other exchange. Mr. Felt expressed the opinion that the warrants would probably be traded over the counter rather than on the exchange itself.

Mr. Felt then outlined the following timetable for a reorganization proceeding:

1. Filing the bankruptcy proceeding on Friday, November 15, 2002;
2. Filing a plan and disclosure statement approximately one month thereafter;
3. Having a hearing on the plan and disclosure statement one month later;
4. Having a confirmation hearing approximately one month following that, and, finally;
5. Emerging from bankruptcy one month after confirmation.

As he described it, the process would take four to five months. Mr. Dehney and Mr. Rayburn confirmed the reasonableness of that estimate. A brief discussion ensued of one of the obstacles in the bankruptcy process, that is, that discontinued floor plan lenders may have claims against the manufacturing entity, HBOS, and may object to the underlying consolidation concept embodied in the reorganization Term Sheet.

Several Directors asked about the value of a non-binding agreement with Lotus. Mr. Felt responded that, based on his own experience in the NTL case, a non-binding agreement in principle for a restructuring deal is honored in the marketplace. Mr. Streeter asked whether the timing was sufficient to obtain a deal with Berkshire Hathaway by Friday. Mr. Felt's answer was that we can get to a deal by Friday because Mr. Buffett is in town and can make decisions, and Berkshire Hathaway has already said that they can work with a Friday decision date. Mr. Phillips asked whether the stock would trade after a proceeding and CSFB's answer is that it should trade somewhere above \$10 per share because the Company would be "fixed" and would be the only Company in the industry without serious debt. Mr. Walker asked if the reorganized Company would have zero leverage; Mr. Felt responded that it would not have much leverage, but the number would not be zero.

Mr. Felt then reviewed the difficulties in getting negotiations to this point and the timing problem with respect to Friday. He stated that the original position taken by Lotus in response to the October 15, 2002 proposal for a 5% equity retention was that there could be no equity retention, and that there was then a period of "radio silence" when Lotus broke off discussions.

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Given that fact, Mr. Phillips observed that attempting to negotiate for a greater equity retention would probably be an equivalent to "bluffing" under the circumstances and would be unjustifiable given both the dynamic of the discussions with Berkshire Hathaway to date and the tight timetable under which the Company is proceeding.

Mr. Phillips then moved that the Board approve a restructuring of Oakwood Homes Corporation along the lines of the Confidential Restructuring Term Sheet of November 11, 2002 presented at this meeting by CSFB. That motion was seconded by Mr. Walker and passed by unanimous vote.

The Board then agreed to meet again at 2:00 p.m., November 14, 2002 to deal further with the restructuring and reorganizing issues.

The Directors then asked management to provide a discussion of the business plan going forward. Mr. Standish outlined that the business plan contemplated a quick closing of plants, a quick closing of retail centers, aggressive wholesale sales of inventory and aggressive sales of repossessed inventory, with the intent of reducing inventory. Mr. Standish reported that as of November 10, 2002, there would be no more repossession or refinance loan approvals and very few repossession refinances would be closed. Once the current pipeline is completed, there would be no more such refinancing during the proceeding. In the future new deals for repossession financing or financing of a repossessed home would be examined as if it were a credit application for a new customer and would be tested against more realistic values. Mr. Smith referred to this as to "putting a wall between the Company and its repossession expiries". Mr. Phillips observed that the Company must also cut its overhead. Mr. Standish reported that the Company will go after every cost including its overhead. Mr. Phillips stated that the Company needed to get its overhead down to the sales level that the Company would experience.

Mr. Walker asked management when the next securitization would occur assuming there was a deal with C-Bass at the end of November. The answer was February or March of 2003. Mr. Phillips asked when the Directors would receive a budget forecast for the upcoming operations, and Mr. Standish reported "within one week". Mr. Streeter asked what role the Board would play once the bankruptcy proceeding was commenced, and Mr. Felt responded that the Board would continue to operate the business and that it would formulate a plan for the Company and would hold on to the exclusive right to form a plan during the proceeding. The current Board would continue to put the plan and disclosure statement forward until the Company emerged from bankruptcy and then the Board Members would probably have the option to leave the Board. Questions were asked as whether to call a shareholders' meeting or to schedule the shareholders' meeting at its usual time and Mr. Rayburn advised that it was probably desirable to have a shareholders' meeting, but to have it late in the process rather than at its presently scheduled time. Mr. Streeter asked whether procedurally it would be acceptable to go forward using telephonic board meetings and Mr. Rayburn responded that telephonic board meetings were fine so long as the material to be reviewed by the Directors was provided to them in advance of the meeting.


Finally a question was asked about SEC filings with respect to the events of this week. The advice from Mr. Rayburn was that the Company needed to file an 8-K as soon as it had an



agreement with Lotus. The Board then adjourned its informal meeting at approximately 12:00 noon.

Mr. O'Driscoll returned to the Board Room thereafter and reported that the conversations with Berkshire Hathaway were progressing, that the issue outstanding on the warrants was only on the percent of the equity underlying the warrants, not "flip protection" or other features, and that the real issue was the question of how much of the servicing fee would be senior in the REMICs with Lotus preferring 50 bps plus some "upside" as opposed to 100 bps. Mr. O'Driscoll also indicated that Lotus had expressed an interest or willingness to discuss DIP financing should the Company feel that it was unfairly treated by its existing lender. This general Q & A session continued until approximately 12:30 p.m. at which point it was adjourned for lunch.

Approved: \_\_\_\_\_

  
Myles E. Standish, Chairman

***EXHIBIT X***



24/09/2007 MILLARD, MARK D.

0001

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

- - -

In re: )  
)  
OAKWOOD HOMES CORPORATION, ) Chapter 11  
et al., )  
)  
Debtors. )  
-----) Case No.  
OHC LIQUIDATION TRUST, )  
) 02-13396 (PJW)  
Plaintiff, )  
)  
vs. )  
) Pages 1 - 82  
CREDIT SUISSE FIRST BOSTON, )  
et al., )  
)  
Defendants. )  
-----)  
AND RELATED CROSS-ACTION. )  
)

TELEPHONIC DEPOSITION OF:

MARK D. MILLARD

MONDAY, SEPTEMBER 24, 2007

1:03 P.M.

Reported by:

ALFRED J. LONG

CSR No. 2024

24/09/2007 MILLARD, MARK D.

24/09/2007 MILLARD, MARK D.

## TELEPHONIC DEPOSITION OF MARK D.

MILLARD, the witness, taken on behalf of the  
Plaintiff at 1901 Avenue of the Stars, Twelfth Floor,  
Los Angeles, California, commencing at 1:03 p.m.,  
Monday, September 24, 2007, before Alfred J. Long,  
CSR No. 2024.

## APPEARANCES OF COUNSEL:

## FOR THE PLAINTIFF:

STUTMAN TREISTER & GLATT, PC  
BY: SCOTT H. YUN, ESQ.  
1901 Avenue of the Stars  
Twelfth Floor  
Los Angeles, California 90067-6013  
(310) 228-5750

## FOR THE WITNESS (TELEPHONICALLY):

MUNGER TOLLES & OLSEN LLP  
BY: KELLY M. KLAUS, ESQ.  
355 South Grand Avenue  
15th Floor  
Los Angeles, California 90071-1560  
(213) 683-9100

## I N D E X

WITNESS	EXAMINATION	PAGE
MARK D. MILLARD	(By Mr. Yun)	5
	(By Mr. Osnato)	68

## E X H I B I T S

NO.	PAGE	DESCRIPTION
Exhibit 153	51	E-mail from Mr. Standish to Mr. Muir, 11/29/02, re Additional Thoughts

## PREVIOUSLY MARKED/PAGE FIRST REFERENCED

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APPEARANCES OF COUNSEL (Continued)  
  
FOR DEFENDANT CREDIT SUISSE FIRST BOSTON  
(TELEPHONICALLY):

LINKLATERS LLP  
BY: MICHAEL OSNATO, ESQ.  
JUSTIN WILLIAMSON, ESQ.  
1345 Avenue of the Americas  
New York, New York 10105  
(212) 903-9000

LOS ANGELES, CALIFORNIA;  
MONDAY, SEPTEMBER 24, 2007; 1:03 P.M.

MARK D. MILLARD,

having been first duly sworn, was  
examined and testified as follows:

## EXAMINATION

BY MR. YUN:

Q. Mr. Millard, my name is Scott Yun. I'm one  
of the attorneys for OHC Liquidation Trust, the  
plaintiff in this action. Before we begin, I'd like  
to direct the stipulation to the attorneys.

Can we stipulate on the record here today  
that this deposition may be taken over the telephone,  
including the administration of the oath by phone,  
and that once transcribed, this shall act as our  
stipulation for a telephonic deposition required  
under the applicable rules?

MR. WILLIAMSON: Linklaters agrees.

MR. KLAUS: That's fine with us.

/ / / / / /

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1 BY MR. YUN:

2 Q. Mr. Millard, thank you once again for making  
3 yourself available for this deposition. You're not a  
4 party to this action, so I know we're infringing on  
5 your time. I will try to make this as short a  
6 deposition as possible.

7 Before we begin, Mr. Millard, can I confirm  
8 that you have a packet of documents my office sent to  
9 Munger Tolles?

10 A. I do have a package of documents in front of  
11 me.

12 Q. In addition, on Friday, counsel for Credit  
13 Suisse e-mailed to me, which then I forwarded to  
14 Mr. Klaus, three documents that Credit Suisse may ask  
15 you questions about at this deposition.

16 Do you have that e-mail and the documents?

17 A. I believe I do, yes.

18 Q. During this deposition, I am going to refer  
19 to OHC Liquidation Trust as either the Trust or the  
20 plaintiff. And also, for convenience sake, when I  
21 refer to Oakwood Homes, I mean Oakwood Homes  
22 Corporation and its affiliates. And also, just for  
23 convenience, when I refer to Credit Suisse, I mean  
24 the Credit Suisse entities that are the defendants in  
25 this action.

6

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1 Let's get started. Anything else.

2 Mr. Millard? Do you have any questions?

3 A. No.

4 Q. Can you please state your full name for the  
5 record.

6 A. Mark David Millard.

7 Q. Have you ever been deposed, Mr. Millard?

8 A. One time prior to this.

9 Q. Let me briefly go over some of the ground  
10 rules for this deposition.

11 If you do not understand a question, please  
12 say so, so that I can correct any ambiguities. If  
13 you do answer my question, I will assume that you  
14 understood the question. Do you understand?

15 A. Yes.

16 Q. Please provide verbal responses so that the  
17 court reporter can take down your response  
18 accurately, and so that I can hear your response.

19 Do you understand?

20 A. Yes.

21 Q. Please let me complete my question before  
22 answering so that we don't talk over each other, and  
23 I will try to do the same and not talk over your  
24 answers. That makes it easier for the court reporter  
25 to take down the questions and the responses.

7

1 I think this is particularly important,  
2 since this is a telephonic deposition, and everyone's  
3 in a different location today. Do you understand?

4 A. Yes.

5 Q. From time to time, your attorney or counsel  
6 for Credit Suisse may object. However, unless your  
7 attorney instructs you not to answer, you're required  
8 to respond to the best of your abilities.

9 Do you understand?

10 A. Yes.

11 Q. One suggestion. Because this is a  
12 telephonic deposition, it's probably a good idea to  
13 wait a little before responding to any question, in  
14 order to give your attorney, and also counsel for  
15 Credit Suisse, to interpose their objections.

16 Is there any reason why you cannot testify  
17 accurately and to the best of your abilities at  
18 today's deposition?

19 A. No.

20 Q. All right. Can you briefly describe for me  
21 your formal education since high school.

22 A. I've got a bachelor of science in economics  
23 from the University of Redlands, California.

24 Q. Have you ever obtained any professional  
25 licenses such as a CPA?

8

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1 A. No.

2 Q. Who is your current employer?

3 A. Berkshire Hathaway.

4 Q. How long have you worked for Berkshire  
5 Hathaway?

6 A. I've worked for Berkshire Hathaway, or one  
7 of various subsidiaries, since 1984.

8 Q. Can you describe for me your duties and  
9 responsibilities at Berkshire Hathaway.

10 A. My title is director of financial assets,  
11 and as such, my duties include investing the excess  
12 cash for Berkshire and/or various fixed income  
13 instruments.

14 Q. Were your duties and responsibilities  
15 similar in the year 2000 to 2002 time period?

16 A. Yes.

17 Q. Do you know Tom Connors of Credit Suisse?

18 A. Yes.

19 Q. How did you first become acquainted with  
20 Mr. Connors?

21 A. Mr. Connors was our sales coverage for  
22 Credit Suisse when he was -- I believe it was on the  
23 mortgage side, the mortgage desk.

24 Q. Have you worked with Mr. Connors in the  
25 Oakwood Homes matter?

9

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1 A. Yes.

2 Q. In what particular ways have you worked with

3 Mr. Connors in the Oakwood Homes matter?

4 MR. KLAUS: I object to the question as

5 vague and ambiguous. If the witness understands, he

6 can answer, but maybe counsel can rephrase that.

7 And Mr. Millard, you can answer the question

8 if you understand it, or if you'd like counsel to

9 rephrase it, you can request that.

10 THE WITNESS: Would you rephrase that

11 question, please.

12 BY MR. YUN:

13 Q. Sure. How was Mr. Connors involved in the

14 Oakwood Homes case related to your work on behalf of

15 Berkshire Hathaway?

16 A. As I recall, Mr. Connors presented a number

17 of opportunities over the course of a long period of

18 time. He was the base person, if you will, from

19 Credit Suisse to Berkshire, to myself, so he and I

20 would have discussed many aspects of the case,

21 including the bonds, the public debt of the company,

22 as well as other potential investments in the firm

23 Oakwood.

24 Q. Have you worked with Mr. Connors on another

25 matter involving a mobile home or manufactured home

10

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1 company besides Oakwood Homes?

2 A. I don't believe so, no.

3 Q. Do you know Piachra O'Driscoll of Credit

4 Suisse?

5 A. Yes.

6 Q. How did you first become acquainted with

7 Mr. O'Driscoll?

8 A. Piachra, at some point during the

9 conversations that Mr. Connors and I had, presented

10 another opportunity for an investment in Oakwood

11 Homes that included some of the firm's B-2 bonds from

12 prior securitizations.

13 Q. Had you worked with Mr. O'Driscoll before

14 the Oakwood Homes matter?

15 A. I don't believe so. That's the first

16 recollection that I have that he and I worked

17 together.

18 Q. Have you worked with Mr. O'Driscoll on

19 another matter involving a mobile home or

20 manufactured home company?

21 A. I don't believe I have, no.

22 Q. Do you know Jared Felt of Credit Suisse?

23 A. Jared Felt, yes.

24 Q. How did you first become acquainted with

25 Mr. Felt?

11

1 A. It was similar to Mr. O'Driscoll's, in that

2 it was somewhat down the road that he became involved

3 in, I believe, the restructuring of the firm, and he

4 and I first met.

5 Q. So you never worked with Mr. Felt before

6 Oakwood Homes?

7 A. No, sir.

8 Q. Have you worked with Mr. Felt on another

9 matter involving a mobile home or manufactured home

10 company?

11 A. No, sir.

12 Q. Do you know Susan Menkhaus of Credit Suisse?

13 A. Susan Menkhaus? Yes.

14 Q. How did you first become acquainted with

15 Ms. Menkhaus?

16 A. Very similar to the prior responses with

17 Jared and Piachra. She was working for Credit Suisse

18 on the Oakwood Homes case, and we exchanged numerous

19 e-mails and phone calls and whatnot.

20 Q. Have you worked with Ms. Menkhaus on another

21 matter involving a mobile home or manufactured home

22 company?

23 A. No, I don't believe so, although she's --

24 no, the answer is no.

25 Q. How would you describe your responsibility

12

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1 in Berkshire Hathaway's dealings with Oakwood Homes

2 in the time period 2000 to 2002?

3 A. I'm sorry, would you repeat that.

4 Q. How would you describe your responsibility,

5 or the role, in dealing with Oakwood Homes back in

6 2000 to 2002?

7 A. Well --

8 MR. WILLIAMSON: Objection to form.

9 MR. KLAUS: I think Mr. Millard -- this is

10 Mr. Clause -- you can answer. That was an attorney

11 for Credit Suisse making the objection, I believe, to

12 the form to preserve his record.

13 If the question is too general for you to

14 answer, you can ask counsel to rephrase it. If you

15 would like to give a general description of your role

16 in the process, you can do that, too.

17 THE WITNESS: Okay. My response would be, I

18 was responsible for performing some research on

19 potential investments in this firm and presenting it

20 to my superior.

21 BY MR. YUN:

22 Q. Who were your superiors?

23 A. Warren Buffett, B u - f - f - e - t - t.

24 Q. When did Berkshire Hathaway first become

25 involved with Oakwood Homes?

13

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1 A. To the best of my knowledge, it was sometime  
2 back in 2001. I don't have the specific date in  
3 front of me, but it seems like around that 2001 time  
4 frame.

5 Q. Were you involved in that first transaction  
6 or involvement?

7 A. Which specific first transaction are you  
8 speaking of?

9 Q. The one that you mentioned, the one in 2001,  
10 Berkshire Hathaway's first involvement with Oakwood  
11 Homes.

12 A. Yes.

13 Q. Can you describe for me that first  
14 transaction in 2001.

15 A. I believe the first investment in Oakwood  
16 Homes securities was just the market purchase of  
17 their outstanding public debt of bonds.

18 Q. What was Berkshire Hathaway's interest in  
19 purchasing the corporate bonds of Oakwood Homes?

20 A. Similar to other purchases that we've made.  
21 We were hoping to buy them at a point where we could  
22 earn a fair return for the risk involved.

23 Q. Was that transaction brought to Berkshire  
24 Hathaway by Oakwood Homes or Credit Suisse?

25 MR. WILLIAMSON: Objection to form.

1 question that you believe need clarification, you can  
2 point that out, too.

3 THE WITNESS: Okay. My recollection is that  
4 this proposed transaction was brought to us by Credit  
5 Suisse.

6 BY MR. YUN:

7 Q. At the time Credit Suisse brought this  
8 opportunity to Berkshire Hathaway, were you looking  
9 to invest more in Oakwood Homes independently?

10 A. We had the willingness to continue  
11 purchasing public debt of Oakwood Homes, but at that  
12 time had not considered, you know, this Lotus-type  
13 purchase.

14 Q. What was Berkshire Hathaway's objective in  
15 investing in the Oakwood Homes B-2 securities?

16 MR. KLAUS: I'm sorry, Mr. Yun, I missed the  
17 tail end of that question. Could you repeat it.

18 MR. YUN: Sure.

19 Q. What was Berkshire Hathaway's objective in  
20 investing in Oakwood Homes B-2 securities?

21 A. The response would be very similar to the  
22 one I gave regarding our purchase of the public debt.  
23 It was to purchase them at such a price that we  
24 thought we would make a fair return on our  
25 investment.

14

16

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1 MR. KLAUS: I join the objection.

2 Mr. Millard, if you recall how it was you  
3 first became aware of the opportunity, you can  
4 testify to that.

5 THE WITNESS: I don't specifically recall  
6 this coming to us from Credit Suisse, but I do not  
7 have that specific a recollection of the dealer we  
8 used to purchase the bonds.

9 BY MR. YUN:

10 Q. Mr. Millard, are you familiar with what are  
11 described as the Lotus transactions?

12 A. Yes.

13 Q. Can you describe for me, generally, what the  
14 Lotus transactions were.

15 A. Generally speaking, that was a transaction  
16 that included the purchase, by Berkshire Hathaway or  
17 its subsidiaries, of collateral that included the B-2  
18 tranches from prior securitizations, prior Oakwood  
19 securitizations.

20 Q. Who contacted Berkshire Hathaway about the  
21 opportunity to purchase the B-2 securities?

22 MR. WILLIAMSON: Objection to form.

23 MR. KLAUS: And again, Mr. Millard, if you  
24 understand the question, you can certainly respond to  
25 it. If there are assumptions that are made in the

1 Q. Were you the person at Berkshire Hathaway  
2 who negotiated the Lotus transactions?

3 A. I was certainly heavily involved, yes. My  
4 boss would be included in that, and I would have  
5 relayed, you know, whatever information to Credit  
6 Suisse.

7 Q. Who did you negotiate the terms of the Lotus  
8 transactions with?

9 A. The question is, who did I negotiate the  
10 terms with?

11 Q. Yes.

12 A. With various personnel at Credit Suisse,  
13 including Tom Connors.

14 Q. Did you talk to anyone from Oakwood Homes  
15 directly while negotiating the Lotus transactions?

16 A. To the best of my recollection, I did not.

17 Q. Did Fiachra O'Driscoll make any  
18 representations to you that he had the authority to  
19 negotiate the terms of the Lotus transactions on  
20 behalf of Oakwood Homes?

21 MR. WILLIAMSON: Objection to form.

22 THE WITNESS: Well, I'll just answer as best  
23 I can. Fiachra was certainly one of the point  
24 persons I dealt with in this transaction.

25 But to answer the question, did he, you

15

17

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1 know, indicate that he had authority, I had known by  
2 that time that he -- you know, he was working with  
3 the company, but I don't have a specific recollection  
4 of, you know, what authority he was under.

5 BY MR. YUN:

6 Q. Did Mr. Tom Connors make any representations  
7 to you regarding his authority to negotiate on behalf  
8 of Oakwood Homes?

9 MR. WILLIAMSON: Objection to form.

10 THE WITNESS: The way I viewed Tom Connors'  
11 responsibility was, he was a go-between between us  
12 and/or other personnel at his firm and/or the  
13 company, so I did not take Tom's relationship as  
14 meaning that he had the authority to get a deal done.

15 BY MR. YUN:

16 Q. Did you believe Fiachra O'Driscoll had the  
17 authority to negotiate the terms of the Lotus  
18 transactions on behalf of Oakwood Homes?

19 MR. WILLIAMSON: Objection.

20 MR. KLAUS: I'm sorry, I didn't -- is the  
21 question, Mr. Yun, did he believe that at the time?

22 MR. YUN: Yes, did he believe that at the  
23 time?

24 THE WITNESS: I believed at the time Fiachra  
25 was working with the company in structuring a deal

1 transactions, were there any discussions about the  
2 financial health of Oakwood Homes?

3 MR. WILLIAMSON: Objection.

4 THE WITNESS: There were numerous  
5 discussions throughout the term of our investment  
6 regarding the financial health of Oakwood.

7 BY MR. YUN:

8 Q. What were your concerns about the financial  
9 health of Oakwood?

10 MR. WILLIAMSON: Objection to form.

11 THE WITNESS: First and foremost, my first  
12 question at the time was whether or not they were  
13 going to survive, and if so, in what form.

14 BY MR. YUN:

15 Q. During those negotiations, were there any  
16 discussions about Oakwood Homes filing for  
17 bankruptcy?

18 A. Certainly, at some point, those discussions  
19 took place. Certainly, later. You know, certainly,  
20 as the filing date approached.

21 Q. During the negotiations over the Lotus  
22 transactions, were there any discussions about what  
23 is known as the Loan Assumption Program, or the LAP?

24 MR. WILLIAMSON: Objection to form.

25 THE WITNESS: I don't -- I don't recall

18

20

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1 that ultimately became the Lotus transaction.

2 BY MR. YUN:

3 Q. During the negotiations over the Lotus  
4 transactions, did Fiachra O'Driscoll, or anyone else  
5 at Credit Suisse, mention that he or she knew about  
6 Berkshire Hathaway's existing investment in Oakwood  
7 Homes?

8 MR. WILLIAMSON: Objection.

9 THE WITNESS: At some point it became known  
10 to me that they were aware of, you know, our  
11 ownership of the public debt. I don't recall the  
12 specific conversation, but generally speaking, the  
13 company and/or Credit Suisse was aware of the size of  
14 our investment.

15 BY MR. YUN:

16 Q. Do you recall if you mentioned anything  
17 about Berkshire Hathaway's prior investment in  
18 Oakwood Homes during those negotiations?

19 A. I would answer this way: I wouldn't have  
20 volunteered it, but if they came -- you know, my  
21 recollection is, at some point, they came and, you  
22 knew, it was with the idea that we had purchased a  
23 fair amount of bonds, and at some point, I had the  
24 authority to confirm that with them.

25 Q. During the negotiations over the Lotus

1 specifically discussions over the Loan Assumption  
2 Program that you mentioned.

3 BY MR. YUN:

4 Q. Did you believe -- strike that.

5 While negotiating the Lotus transactions,  
6 were there any discussions about what Oakwood Homes  
7 would do with the proceeds from the Lotus  
8 transactions?

9 MR. WILLIAMSON: Objection.

10 THE WITNESS: I don't specifically recall,  
11 but it's certainly possible.

12 BY MR. YUN:

13 Q. How did the parties, during the Lotus  
14 transactions, arrive at the 2 percent fee for Credit  
15 Suisse?

16 MR. WILLIAMSON: Objection.

17 THE WITNESS: Whatever fee was negotiated  
18 between -- would have been negotiated between Credit  
19 Suisse and Oakwood Homes. We were not a party to  
20 that.

21 BY MR. YUN:

22 Q. So it's your understanding that Oakwood  
23 Homes had agreed to the 2 percent fee?

24 MR. WILLIAMSON: Objection.

25 MR. KLAUS: I would object to it, too.

19

21

1 If you have an understanding, one way or the  
2 other, Mr. Millard, you can say that, but if you  
3 don't have an understanding as to how it came about,  
4 you can say that, too.

5 THE WITNESS: I don't recall what it was,  
6 because I wasn't a party to it, so I -- if I did at  
7 one point, I don't recall now.

8 BY MR. YUN:

9 Q. Mr. Millard, it's my understanding, as part  
10 of the Lotus transactions, Oakwood Homes provided to  
11 Berkshire Hathaway a guarantee of 100 percent of the  
12 face value. Is this correct?

13 MR. WILLIAMSON: Objection.

14 THE WITNESS: Included in the Lotus  
15 transaction were a corporate guarantee, that is  
16 correct.

17 BY MR. YUN:

18 Q. Were the guarantees important to Berkshire  
19 Hathaway?

20 MR. WILLIAMSON: Objection.

21 THE WITNESS: Certainly.

22 BY MR. YUN:

23 Q. What were your concerns?

24 MR. WILLIAMSON: Objection to form.

25 MR. KLAUS: Related to the guarantee?

1 sound correct to you, Mr. Millard?

2 A. The 55 percent price does sound correct.

3 Q. Did Credit Suisse perform financial analyses  
4 on the B-2 securities to determine the price?

5 MR. WILLIAMSON: Objection to form.

6 THE WITNESS: We did receive numerous  
7 documents from Credit Suisse and analytics pertaining  
8 to these transactions.

9 BY MR. YUN:

10 Q. Were you relying on Credit Suisse to provide  
11 you those financial analyses?

12 MR. WILLIAMSON: Objection to form.

13 THE WITNESS: We did certainly rely on the  
14 analytics to help us decide whether or not to  
15 participate in this transaction, yes.

16 BY MR. YUN:

17 Q. Did you believe Credit Suisse was obligated  
18 to provide the analyses to Berkshire Hathaway?

19 MR. WILLIAMSON: Objection to form.

20 THE WITNESS: I would put it this way:  
21 There would be no discussions of entering into this  
22 type of transaction without much of the information  
23 that was provided.

24 BY MR. YUN:

25 Q. You mentioned a few minutes ago that certain

22

24

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1 MR. YUN: Yes, related to the guarantee.

2 THE WITNESS: Well, it was an added  
3 security, if you will, to the structure of the deal,  
4 that being that if the cash flows were not as great  
5 as anticipated, then the corporate entity would  
6 guarantee those cash flows and would give us one more  
7 layer of protection.

8 BY MR. YUN:

9 Q. Mr. Millard, it's my understanding that  
10 Credit Suisse -- strike that.

11 Mr. Millard, it's my understanding there  
12 were four Lotus transactions. Was Credit Suisse  
13 involved in all four Lotus transactions?

14 A. Credit Suisse was involved in all of the  
15 Lotus transactions that we purchased. Four sounds  
16 right, but I know that they were involved in each of  
17 them.

18 Q. Can you generally describe the pricing  
19 structure of each of the Lotus transactions.

20 MR. WILLIAMSON: Objection.

21 THE WITNESS: My recollection is, we paid  
22 the same percentage of par amount for each of those  
23 four.

24 BY MR. YUN:

25 Q. Was the par amount 55 percent? Does that

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1 financial data were provided. Can you describe them  
2 for me again.

3 MR. WILLIAMSON: Objection to form.

4 THE WITNESS: I'm sorry, would you repeat  
5 that question.

6 BY MR. YUN:

7 Q. Certainly. I previously asked, did Credit  
8 Suisse perform financial analyses on the B-2  
9 securities to determine the price? I believe you  
10 mentioned that Credit Suisse provided to Berkshire  
11 Hathaway certain financial data.

12 Could you describe them for me again.

13 MR. WILLIAMSON: Objection.

14 MR. KLAUS: And again, Mr. Millard,  
15 obviously, it's to the best of your recollection of  
16 what the data was.

17 THE WITNESS: Right. I don't believe I  
18 described the data, but I believe the question is  
19 that, you know, what documents were given us to look  
20 at, and I would say, generally speaking, there were  
21 numerous cash flow scenarios run, some what-ifs.

22 Certain loss expectations were thrown in  
23 there to see what the cash flows would be; and  
24 basically, just, you know, a whole host of data to  
25 try to come to grips of how this security, you know,

23

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1 would pay out over time.

2 BY MR. YUN:

3 Q. Did you believe that the cash flow scenarios  
4 and documents provided to you by Credit Suisse were  
5 being updated periodically?

6 MR. WILLIAMSON: Objection to form.

7 THE WITNESS: Yes.

8 BY MR. YUN:

9 Q. Was there --

10 A. Certainly, as it relates to ongoing  
11 delinquencies, weekly delinquency reports, loss  
12 reports, et cetera.

13 Q. Did you receive updated cash flow scenarios  
14 or models from Credit Suisse during the Lotus  
15 transactions?

16 MR. WILLIAMSON: Objection to form.

17 THE WITNESS: Yes, I believe we got periodic  
18 updates of numerous reports and data.

19 BY MR. YUN:

20 Q. As part of the Lotus transactions, were you  
21 provided with any valuation or appraisal of the B-2  
22 securities?

23 A. To help explain the matter, part of the  
24 issue was that the B-2s were, I believe, on the  
25 balance sheet of the corporation -- they effectively

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1 owned them -- and there was little liquidity in this  
2 marketplace. Nobody would buy them, so this was a  
3 way to monetize, if you will, these securities.

4 So I don't believe that there were many fair  
5 market value estimates around at the time. So, to my  
6 knowledge, I guess the answer is, I don't believe so.

7 Q. We previously discussed that there were  
8 multiple Lotus transactions. My recollection is that  
9 there were four. You weren't sure whether there were  
10 four, but you thought that was about right.

11 Why were all the Lotus transactions priced  
12 the same? And by "price," I mean 55 percent of par  
13 value.

14 MR. KLAUS: And again, if you have an  
15 understanding, Mr. Millard.

16 THE WITNESS: My general recollection is  
17 that we would earn a certain return if losses were  
18 less than a certain number, and that, generally  
19 speaking, these transactions were very similar.

20 BY MR. YUN:

21 Q. You may have answered this question, but  
22 this will be a little more specific.

23 Between the first Lotus transaction and the  
24 last Lotus transaction, did Credit Suisse provide you  
25 with updated cash flow models or financial models?

27

1 MR. WILLIAMSON: Objection to form.

2 THE WITNESS: I'm sure they did, as we would  
3 have wanted to stay on top of not only what we had  
4 already purchased, but also to help us gauge whether  
5 or not an additional investment would be warranted.

6 BY MR. YUN:

7 Q. Were the financial data and models provided  
8 by Credit Suisse good? Did you think they were good  
9 or poor?

10 MR. WILLIAMSON: Objection to form.

11 MR. KLAUS: I'd say it's a little vague and  
12 ambiguous.

13 Mr. Millard, if you understand the question,  
14 you can answer it. If you'd like more clarification,  
15 you can ask for it.

16 THE WITNESS: My response would be: There  
17 were certainly errors in the figures over time, as we  
18 found out and discovered, you know, unfortunately, a  
19 little later.

20 BY MR. YUN:

21 Q. If you can, can you describe for me the  
22 errors that you alluded to in your response.

23 A. One area of concern became some documents  
24 that were provided as to how the Lotus transactions  
25 would work. In fact, I don't believe they were

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1 accurately modeled, in that there were some triggers  
2 on certain classes that were not ultimately met, and  
3 we certainly didn't realize that, and weren't told,  
4 to my knowledge, up front about that.

5 And then, you know, there were many figures  
6 involved, and they were various corrections that  
7 would -- you know, we would find, you know,  
8 throughout the course of the review and try to get  
9 those corrected.

10 Q. Mr. Millard, do you recall a meeting on  
11 July 24, 2002, between Oakwood Homes, Berkshire  
12 Hathaway and Credit Suisse in Nebraska?

13 A. I believe there were a couple of meetings  
14 that were, you know, met -- that we had with those  
15 parties. But yes, that sounds correct.

16 Q. Who contacted Berkshire Hathaway about  
17 setting up this particular meeting in July 2002?

18 MR. WILLIAMSON: Objection to form.

19 THE WITNESS: As with most of the meetings  
20 and calls, I believe that was set up through -- Tom  
21 Connors would have tried to at least help schedule  
22 that.

23 BY MR. YUN:

24 Q. What did you think the purpose of the  
25 meeting was?

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1 MR. KLAUS: And by that do you mean, does  
2 Mr. Millard have a recollection of what he thought  
3 the meeting was going to be prior to the meeting?  
4 MR. YUN: Yes.  
5 MR. KLAUS: Okay.  
6 THE WITNESS: Again, it's been a while, but  
7 my recollection is that the management team wanted to  
8 meet with, quite frankly, my boss and myself, but  
9 probably more my boss, and to perhaps give us a  
10 summary or recap of what was happening in the  
11 manufactured housing industry, you know, and with  
12 Oakwood in particular.  
13 It was my recollection that by this time,  
14 they had already known that we had, you know, made a  
15 significant investment in their public debt, and I  
16 believe we had made several or numerous -- well, I  
17 don't know how many of the four of the Lotus  
18 transactions we had already done, but we had probably  
19 done a majority of them by then, certainly.  
20 BY MR. YUN:  
21 Q. During the July 2002 meeting, was there any  
22 discussion of the Loan Assumption Program?  
23 A. I don't recall that specifically. I don't  
24 remember the exact details of the meeting itself.  
25 Q. Mr. Millard, I'd like to refer you, if you

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1 can do for me, a document that I sent to you. It was  
2 previously marked as Exhibit 19, or CSFB Exhibit 19.  
3 MR. KLAUS: Mr. Yun?  
4 MR. YUN: Yes?  
5 MR. KLAUS: This will probably speed things  
6 along for both you and for Credit Suisse's counsel.  
7 My understanding is that Mr. Millard has two  
8 stacks of documents in front of him.  
9 MR. YUN: Uh-huh.  
10 MR. KLAUS: The shorter stack, I think, is  
11 the several documents that were sent us on Friday by  
12 Credit Suisse's counsel, and the only marginally  
13 larger stack are the documents that I think your  
14 office had previously identified, and Mr. Millard, I  
15 think, has those two stacks in date order.  
16 So, for both counsel, if you first say the  
17 date of the document, that may be the easiest way for  
18 him to fish it out of the stack that he has.  
19 BY MR. YUN:  
20 Q. Okay, Exhibit 19. It's an e-mail from  
21 Fiachra O'Driscoll to Jared Pelt, dated October 18,  
22 2002, but it's actually an e-mail stream.  
23 A. Okay, I have that in front of me now.  
24 Q. And it bears Bates-stamp No. CSFB-35143 to  
25 35153.

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1 Mr. Millard, can you go to page number  
2 CSFB-35143 of that document.  
3 A. I'm there.  
4 Q. This document appears to be a presentation  
5 with Credit Suisse First Boston's name on it, and it  
6 states it's a Berkshire Hathaway presentation, dated  
7 July 2002.  
8 This specific page I refer you to,  
9 Mr. Millard, states:  
10 "LAP expense grew to \$51 million  
11 in 2002 Q2."  
12 Does this refresh your recollection about  
13 whether LAP was discussed at the July 2002 meeting?  
14 MR. WILLIAMSON: Objection.  
15 THE WITNESS: I don't recall any specific  
16 conversations on it today, but it is certainly  
17 possible that it was a topic of discussion.  
18 BY MR. YUN:  
19 Q. Do you recall if someone, specifically at  
20 the July 2002 meeting, went over this page?  
21 MR. WILLIAMSON: Objection.  
22 MR. KLAUS: And again, by "this page,"  
23 Mr. Yun, are you asking whether Mr. Millard has a  
24 recollection of actually seeing this line at the July  
25 2002 meeting?

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1 MR. YUN: Yes.  
2 MR. KLAUS: Okay.  
3 THE WITNESS: I just don't recall it.  
4 Again, I'm not making a statement whether or not it  
5 was discussed. You know, if it was part of the  
6 package, it most likely was. I just don't have  
7 specific recollection of it.  
8 BY MR. YUN:  
9 Q. From Berkshire Hathaway's perspective, what  
10 was the outcome of the July 2002 meeting?  
11 MR. WILLIAMSON: Objection to form.  
12 THE WITNESS: My take-away, again, based on  
13 my recollection today, was certainly that we became  
14 hopefully more familiar with the trends in the  
15 marketplace in general, and also with this company,  
16 and that, you know, I think it became clear at some  
17 point that, you know, this company had some issues,  
18 some financial issues and concerns, but it just --  
19 I'm sorry, I don't have much more of a  
20 recollection -- you know, specific recollection of  
21 the conversation at the meeting.  
22 BY MR. YUN:  
23 Q. As a result of learning -- strike that.  
24 As a result of the information provided to  
25 Berkshire Hathaway at the July 2002 meeting, did you

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1 have any concerns about the Lotus transactions?

2 MR. WILLIAMSON: Objection to form.

3 THE WITNESS: I think my concerns were

4 throughout the whole time of the investment. I was

5 concerned, you know, how everything would hold up.

6 But yes, the answer is, I was certainly, you know,

7 concerned about how it would do.

8 BY MR. YUN:

9 Q. At this time I'd like to move on to another

10 meeting. Do you recall a meeting on October 15,

11 2002, between Oakwood Homes, Berkshire Hathaway and

12 Credit Suisse?

13 A. That sounds about right where another

14 meeting took place.

15 Q. Who contacted Berkshire Hathaway about

16 setting up the meeting?

17 MR. WILLIAMSON: Objection to form.

18 THE WITNESS: My guess today would be that

19 it was, again, Tom Connors. He would have been,

20 probably, the one to schedule the meeting, working

21 with others that attended.

22 BY MR. YUN:

23 Q. If someone from Oakwood Homes contacted you

24 directly, would Berkshire Hathaway have met with the

25 company --

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1 MR. WILLIAMSON: Objection.

2 BY MR. YUN:

3 Q. -- in October 2002?

4 MR. WILLIAMSON: Objection to form.

5 THE WITNESS: I'm sorry, is the question,

6 would we have met with Oakwood Homes if someone from

7 management had requested the meeting?

8 BY MR. YUN:

9 Q. Yes.

10 MR. KLAUS: Mr. Millard, if you have a basis

11 for answering, you can answer. I think the question

12 as phrased does call for speculation.

13 THE WITNESS: That's a tough -- it's a tough

14 question for me. We -- I certainly -- it's not my

15 habit or nature to meet with management of the

16 investments that we make. However, this was a little

17 bit different, as we had, you know, certainly gotten

18 knee deep in with them, not only with Lotus, but the

19 bonds themselves.

20 But I guess the best way to put it is, I

21 don't typically meet with the management. And in

22 fact, you know, I had tried to avoid, you know,

23 having -- meeting here in Omaha, or meeting in

24 general, because we just don't do it.

25 We ultimately relented and went ahead as

35

1 kind of a -- I would say, it's my recollection, as a

2 favor to Credit Suisse to have them, you know, bring

3 the company out.

4 BY MR. YUN:

5 Q. Do you recall what the purpose of the

6 October 2002 meeting was?

7 MR. WILLIAMSON: Objection to form.

8 THE WITNESS: You know, I believe -- I

9 believe it not only was an update on where they

10 stand, but my recollection was, they came to us to

11 describe how poorly things were going, and that, you

12 know, a reorganization of some sort was probably

13 going to be in order.

14 BY MR. YUN:

15 Q. During the October 2002 meeting, was

16 bankruptcy specifically discussed?

17 MR. WILLIAMSON: Objection.

18 THE WITNESS: Again, the exact details are a

19 little fuzzy for me, but I would -- you know, my

20 belief was that that was certainly on the table as

21 the viable outcome.

22 BY MR. YUN:

23 Q. Did Oakwood Homes or Credit Suisse present

24 to Berkshire Hathaway any specific plan of

25 restructuring or recapitalization during the

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1 October 2002 meeting?

2 A. My recollection is is that there was some

3 documentation of different -- or at least one

4 reorganizational alternative. But yeah, my guess

5 would be that there was some form of documentation of

6 that effect.

7 Q. Do you recall if Berkshire Hathaway approved

8 or consented to any restructuring plan or

9 recapitalization plan during the October 2002

10 meeting?

11 MR. WILLIAMSON: Objection.

12 THE WITNESS: I do have a specific

13 recollection on this one, and I would say that it

14 became clear our thoughts for the best way to respond

15 to the financial pressure they were under was much

16 different than the company's or the dealer, Credit

17 Suisse.

18 BY MR. YUN:

19 Q. During the October 2002 meeting, do you

20 recall if you or anyone else at Berkshire Hathaway

21 who participated in the meeting knew that Credit

22 Suisse held warrants of Oakwood Homes?

23 MR. WILLIAMSON: Objection to form.

24 THE WITNESS: I'm sorry, that Credit Suisse

25 held warrants?

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1 BY MR. YUN:  
2 Q. Yeah, warrants of Oakwood Homes.  
3 A. I think I recall it that, you know, that was  
4 a disclosure statement in one of their filings: maybe  
5 a 10-K or a 10-Q. At some point in time, I became  
6 aware of that, certainly. I don't know if, you know,  
7 it was right during that meeting or not.  
8 Q. At the conclusion of the October 2002  
9 meeting, was it clear to you that Oakwood Homes was  
10 going to file for bankruptcy?  
11 MR. WILLIAMSON: Objection to form.  
12 THE WITNESS: It was evident that I believe  
13 that -- you know, looking back now, I believe that  
14 that was more likely than not. They were just  
15 struggling too much, and the market was not getting  
16 any better, and I would say we walked away -- my boss  
17 and I walked away thinking that, you know, they  
18 probably would have to file Chapter 11.  
19 BY MR. YUN:  
20 Q. During the October 2002 meeting, did Credit  
21 Suisse discuss any bankruptcy planning or  
22 preparations that Oakwood Homes was going to do?  
23 MR. WILLIAMSON: Objection to form.  
24 THE WITNESS: My guess -- my recollection is  
25 that they, Credit Suisse, that is, and the company

1 believe.  
2 MR. KLAUS: Mr. Yun?  
3 MR. YUN: Yes.  
4 MR. KLAUS: If you're about to move on,  
5 would now be an okay time for a -- we've been going  
6 for about an hour. Would now be an okay time for a  
7 break?  
8 MR. YUN: Sure. How long?  
9 MR. KLAUS: I would say five minutes or so,  
10 if that works for you.  
11 MR. YUN: Yeah.  
12 MR. KLAUS: I really need a stretch break.  
13 MR. YUN: That's fine.  
14 (A recess was taken.)  
15 MR. WILLIAMSON: Scott, no, this is Justin  
16 in New York, and now that we're back on the record,  
17 and we're about an hour in, when we had set this up,  
18 Tony and I had come to an agreement that you guys  
19 anticipated using an hour and a half of time, which  
20 would allow for us to have an hour and a half, if we  
21 needed it, at the tail end. So I understand that to  
22 still be the case, even though, obviously, Tony is  
23 not taking this, and you are.  
24 MR. YUN: That's correct. I don't have that  
25 much to go before finishing, and I can't --

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1 felt that it would be better to have a -- again, I  
2 can't say for certainty that it was right at this  
3 meeting, but my guess is that it was, a preplanned,  
4 you know, reorganization plan would be better than  
5 just going into Chapter 11 without having a reorg  
6 plan in place  
7 BY MR. YUN:  
8 Q. But there were no specific discussions of  
9 times and responsibility or specific planning for  
10 bankruptcy during the October 2002 meeting?  
11 A. I just didn't hear quite the last part  
12 about -- I heard the part about planning for  
13 bankruptcy. What was right before that?  
14 Q. Let me reask you the question.  
15 During the October 2002 meeting, were there  
16 any specific discussions about bankruptcy planning,  
17 such as times and responsibility for who had to do  
18 certain things in order to get the company ready for  
19 bankruptcy filing?  
20 A. I don't have a great answer. It's certainly  
21 possible, but I don't recall specifically. I  
22 didn't -- I don't recall having a great understanding  
23 of when the bankruptcy would occur, but it's  
24 possible. I just don't recall specifically.  
25 Q. Now I'm going to move on to a term sheet. I

1 MR. WILLIAMSON: Okay. I meant to say that  
2 at the beginning, and I didn't, and I just wanted to  
3 confirm that we were on the same page.  
4 MR. YUN: Right. I can't specifically  
5 promise 30 minutes, but I don't think it would take  
6 too much time.  
7 MR. KLAUS: And just for the record, my  
8 understanding was that we were -- that the parties  
9 had anticipated the total deposition time lasting  
10 approximately two, and not more than three hours  
11 total. So we're as anxious as you guys are to move  
12 things along.  
13 MR. WILLIAMSON: I think we're all on the  
14 same page, Scott. We will anticipate that you will  
15 be drawing to a close around the 5:30 mark, if not  
16 very shortly thereafter.  
17 MR. YUN: Okay. Let's just get started, so  
18 we'll get there quicker.  
19 BY MR. YUN:  
20 Q. Mr. Millard, can I refer you to a document.  
21 It's dated November 15, 2002. The subject line is  
22 "Affirmation of Restructuring Term Sheet." It was  
23 previously Exhibit 9, marked as Exhibit 9.  
24 A. I believe I have it here.  
25 Q. Are you familiar with this document,

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1 Mr. Millard?

2 A. Yes.

3 Q Can you describe for me what this document

4 is

5 MR. WILLIAMSON: Objection to form.

6 THE WITNESS: This document was provided

7 late November 15th, '02. Actually, it just -- it is

8 what it is. I mean, it's a letter about a

9 restructuring of Oakwood Homes, and whether or not we

10 would consider and acknowledge this restructuring

11 potential.

12 BY MR. YUN:

13 Q. Was the term sheet binding?

14 MR. KLAUS: Objection, calls for a legal

15 conclusion.

16 MR. WILLIAMSON: Join the objection.

17 MR. KLAUS: If you have an understanding,

18 Mr. Millard, you're entitled to say that. If you'd

19 like to refer to the document, you can do that, too.

20 THE WITNESS: My understanding was that, you

21 know, nothing was binding as to an agreement at this

22 stage.

23 BY MR. YUN:

24 Q. Did you have any discussions with Credit

25 Suisse that the term sheet was nonbinding?

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1 MR. WILLIAMSON: Objection to form.

2 THE WITNESS: My recollection was is that,

3 you know, it was made clear in the document that it

4 would not be a bind -- we just didn't have enough

5 information, so it would not be -- put us in a

6 situation that we were bound by any, you know,

7 restructuring. That would come later.

8 BY MR. YUN:

9 Q. What did you think Berkshire Hathaway was

10 committing to under the term sheet?

11 MR. WILLIAMSON: Objection.

12 MR. KLAUS: And again, Mr. Millard, if you

13 have an understanding in that regard and you can

14 recall it, you can testify to it.

15 THE WITNESS: My understanding was that we

16 were willing to consider a restructuring of the

17 company, but that we weren't bound by anything as

18 yet. There were still a lot of moving parts at the

19 time, and I believe that we, you know, made that

20 clear in the document.

21 BY MR. YUN:

22 Q. Mr. Millard, was it your understanding that

23 the term sheet was contingent on the debtor-in-

24 possession financing being in place?

25 MR. WILLIAMSON: Objection to form.

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1 THE WITNESS: I don't recall all the

2 contingencies that would have to have been met before

3 we would have participated in a restructuring, so I

4 don't know if that particular contingency made this

5 agreement or not. I'd have to reread it now in front

6 of me, but...

7 BY MR. YUN:

8 Q. Let me ask this question, then. Would

9 Berkshire Hathaway have proceeded under the term

10 sheet if the debtor-in-possession financing was not

11 in place?

12 MR. WILLIAMSON: Objection to form.

13 MR. KLAUS: And again, Mr. Millard, if you

14 have a basis for providing an answer to that, you

15 can.

16 THE WITNESS: I would say the debtor-in-

17 possession financing was clearly a significant fact

18 that would have to take place for us to agree to a

19 restructuring.

20 BY MR. YUN:

21 Q. Before my next question, I wanted to inform

22 you, Mr. Millard, that I'm going to use the term

23 "warehouse facility" or "the loan purchase facility."

24 The Trust refers to it as a warehouse

25 facility, Credit Suisse has informed us that it's a

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1 loan purchase facility, but we are talking about the

2 same facility that Credit Suisse provided to Oakwood

3 Homes prior to bankruptcy.

4 So I may use the term "warehouse facility"

5 or "the loan purchase facility," but I mean the same

6 thing.

7 A. Okay.

8 Q. Would Berkshire Hathaway -- strike that.

9 Would Berkshire Hathaway have proceeded with

10 the term sheet if it knew that the warehouse facility

11 was not in place?

12 MR. WILLIAMSON: Objection to form.

13 THE WITNESS: No, I'm confident in saying

14 that we would not have proceeded with the

15 restructuring.

16 BY MR. YUN:

17 Q. Were there problems with the warehouse

18 facility on November 15th, the date Oakwood Homes

19 filed for bankruptcy?

20 MR. WILLIAMSON: Objection to form.

21 THE WITNESS: I don't specifically recall,

22 on that particular date, the status of the warehouse

23 facility or the loan purchase facility. I do recall,

24 you know, a problem with it, but I couldn't tell you

25 the exact time of that.

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1 BY MR. YUN:  
2 Q. Whose responsibility was it to obtain  
3 debtor-in-possession financing for Oakwood Homes?  
4 MR. WILLIAMSON: Objection.  
5 THE WITNESS: Well, my recollection is that  
6 that would be the company itself and their financial  
7 advisors.  
8 BY MR. YUN:  
9 Q. Do you recall who the financial advisors  
10 were for Oakwood Homes at that time?  
11 A. I believe that that was Credit Suisse.  
12 Q. Whose responsibility was it to have the  
13 warehouse facility or the loan purchase facility in  
14 place on the petition date?  
15 MR. WILLIAMSON: Objection to form.  
16 THE WITNESS: I would respond that, again,  
17 that would be something between the company and/or  
18 its -- and its financial advisors.  
19 BY MR. YUN:  
20 Q. Did Credit Suisse inform you that there were  
21 problems with the debtor-in-possession financing or  
22 restarting the warehouse facility?  
23 MR. WILLIAMSON: Objection.  
24 THE WITNESS: I became aware of some  
25 problems regarding both at some point in time.

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1 BY MR. YUN:  
2 Q. Do you recall when?  
3 A. I wouldn't be able to tell you the date of  
4 where I first became aware of them as the debtor-in-  
5 possession, which I'll refer to as DIP.  
6 As I recall that, there were several issues  
7 and concerns that cropped up, you know, right around  
8 that filing period or just after -- again, I don't  
9 specifically recall -- issues such as the cost of the  
10 facility itself.  
11 I believe there was another bank involved  
12 that had thrown the company some curve balls late in  
13 the game. And then, of course, the warehouse. I  
14 received notification from, I believe, Tom Connors  
15 and Credit Suisse that they were going to pull that  
16 line.  
17 Q. Do you recall whether there was a dispute  
18 about a restart fee for the warehouse facility?  
19 MR. WILLIAMSON: Objection to form.  
20 THE WITNESS: Yes, that was clearly an issue  
21 and concern.  
22 BY MR. YUN:  
23 Q. Can you describe for me the \$3 million  
24 restart fee issue.  
25 MR. KLAUS: I'm sorry, Scott, I didn't hear

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1 that question.  
2 BY MR. YUN:  
3 Q. Can you describe for me the \$3 million  
4 restart fee issue.  
5 MR. WILLIAMSON: Objection.  
6 THE WITNESS: The fact that there was a  
7 reopening fee that Credit Suisse had requested was  
8 certainly not met favorably from my perspective. I  
9 don't know how much more detail you want or what  
10 you're getting at there, but...  
11 BY MR. YUN:  
12 Q. When did you first become aware of the  
13 restart fee issue?  
14 MR. WILLIAMSON: Objection to form.  
15 THE WITNESS: The restructuring fee?  
16 BY MR. YUN:  
17 Q. The \$3 million restart for the warehouse  
18 facility fee.  
19 MR. WILLIAMSON: Objection.  
20 THE WITNESS: Well, perhaps a little  
21 background would be helpful here.  
22 When, you know, I found out that this dealer  
23 was considering pulling the warehouse line, again, I  
24 did not take it favorably. I was very, very upset,  
25 so much so that we -- you know, I requested our

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1 salesperson, Tom Connors, to go up the chain of  
2 command, if you will, to make sure that it stays  
3 open.  
4 At some point, you know, after some heated  
5 discussions and conversations, they indicated -- they  
6 being Credit Suisse -- that they would leave it open  
7 if we would share part of that line. And though that  
8 wasn't -- you know, we had never done that before,  
9 participated in that way, I felt like that was, you  
10 know, such an important issue for this company that  
11 they had to have it, so that I agreed.  
12 Days later -- you know, days or longer, you  
13 know, we found out about several issues that were  
14 going on unbeknownst to us, including a reopening fee  
15 that was not previously negotiated between Credit  
16 Suisse and Berkshire Hathaway.  
17 BY MR. YUN:  
18 Q. Do you recall whether the debtor-in-  
19 possession financing was in place on the petition  
20 date?  
21 A. I don't recall specifically whether or not  
22 it was in place. I don't believe it -- you know,  
23 certainly not in its final form, and I don't recall  
24 at what stage it was when they actually filed.  
25 Q. Do you recall whether the warehouse or the

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1 loan purchase facility was in place or restarted on  
2 the petition date?

3 A. I'm sorry, I don't recall the date that that  
4 was finally -- you know, I don't recall the date that  
5 that was finally operational. It might have been  
6 after that date, but I don't know that for a fact.

7 Q. Now, Mr. Millard, I'm going to go through  
8 some of the other documents that I sent you, but not  
9 all of them.

10 The first document I would like you to take  
11 a look at is an e-mail from Myles Standish to Doug  
12 Muir, dated November 29, 2002. It's a string of  
13 e-mails, which includes your e-mail to Myles Standish  
14 on November 28 of 2002.

15 MR. KLAUS: I'm sorry, Scott, what's the  
16 exhibit number of that?

17 MR. YUN: That doesn't have an exhibit  
18 number. I'm going to ask that it be marked as an  
19 exhibit. That's the one document that I circulated  
20 which does not have an exhibit number.

21 MR. KLAUS: Is this the one with the Bates  
22 numbers in the bottom -- or I guess at the bottom  
23 center -- 29671 to 29672?

24 MR. YUN: That's correct.

25 THE WITNESS: I have that.

1 was not met. That the -- in other words, that the  
2 document that we signed -- or Marc Hanberg signed on  
3 November 15th of '02, was not a commitment on our  
4 part, but just a willingness to consider  
5 infrastructure.

6 BY MR. YUN:

7 Q. In the second paragraph, you state that  
8 Credit Suisse has already been paid for its services.

9 Can you describe for me what you meant by  
10 that statement.

11 MR. WILLIAMSON: Objection to the form.

12 THE WITNESS: For better or worse, I think  
13 that my views were pretty well made known in that  
14 paragraph and in this document.

15 But in general, as a summary, they received  
16 more fees, if you will, by some amendments that they  
17 made to the warehouse loan purchase program, and  
18 that, you know, net/net, you know, the better part of  
19 valor would be to let them have that, but, you know,  
20 as an offset to what they thought that they were  
21 worth.

22 I was not happy with the way they negotiated  
23 that, threw it in there, and I was very upset with  
24 them at the time. But it was my opinion, as I  
25 recall, that, you know, it was pretty much a wash,

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1 MR. YUN: And I'm requesting that the court  
2 reporter mark this as Exhibit 153.

3 (Whereupon, Exhibit 153 was marked  
4 for identification.)

5 BY MR. YUN:

6 Q. Mr. Millard, are you ready for some  
7 questions?

8 A. Yes.

9 Q. Do you recognize this document, Mr. Millard?

10 A. Yes.

11 Q. Part of it --

12 MR. KLAUS: And by "this document," do you  
13 mean, just for purposes of your question, Scott, the  
14 e-mail from Mr. Millard to Mr. Standish?

15 MR. YUN: That's correct.

16 MR. KLAUS: I'm sorry, I didn't mean to  
17 interrupt you. Go ahead.

18 BY MR. YUN:

19 Q. In the first paragraph, Mr. Millard, you  
20 state that the trigger has not been met. Can you  
21 describe what you meant by that statement.

22 MR. WILLIAMSON: Objection to form.

23 THE WITNESS: It was my opinion that the fee  
24 that Credit Suisse was trying to receive as part of a  
25 prior agreement between the company and themselves

1 and if we'd let them have that -- if they were  
2 allowed, you know, those additional fees, that that  
3 would be a pretty good offset to what they thought  
4 they might be owed under the restructuring agreement.

5 BY MR. YUN:

6 Q. Now I'd like to refer you to paragraph No.3  
7 in your e-mail.

8 A. Oh-huh.

9 Q. There, you refer to the \$3 million fee to  
10 open the warehouse line as a clearly disguised  
11 investment banking fee.

12 Can you explain to me what you meant by that  
13 statement.

14 MR. WILLIAMSON: Objection to form.

15 THE WITNESS: It was my opinion that this  
16 firm was trying to make up for any -- or for some  
17 lost investment fees as a result of the firm filing  
18 bankruptcy. That their understanding and mine were  
19 different, but that they were just -- they would try,  
20 however they would, to obtain these investment  
21 banking fees, and in this case, I felt that that's  
22 what they were trying to do by attaching a reopening  
23 fee to the warehouse line.

24 BY MR. YUN:

25 Q. I would like to refer you to the next

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document. It's been previously marked as Exhibit 118. It's an e-mail dated July 25th, 2001. Let me know when you have that document in front of you.

A. I believe I have it now.

Q. Do you recognize this e-mail?

A. It does appear to be an e-mail that I sent to Tom Connors and Fiachra O'Driscoll.

Q. In paragraph 2 and 2A of your e-mail, you ask for cash flows and yield tables from Credit Suisse. Did Credit Suisse provide you with what you requested?

A. I believe they did. I don't necessarily have a recollection of this particular document, but my understanding is that, you know, I would have followed up until I got something to this effect.

Q. By the way, going back one step, what is this e-mail regarding? The subject line reads "Project Lotus."

MR. WILLIAMSON: Objection.

THE WITNESS: The e-mail pertains to the Lotus document or the Lotus transaction that we previously discussed in this deposition. In other words, the purchase of B-2 bonds.

/ / / / /

be audited in order to have a third party make sure that they were correct, and those assumptions would include the loss runs, based on different loss assumptions, so that the cash flows, you know, would be verified.

BY MR. YUN:

Q. Did Credit Suisse perform the audits?

A. I don't specifically recall who was responsible for those audits. My guess is -- well, I don't recall. I wouldn't think it would be them, but I don't recall that's a fact.

Q. Were you provided with audited assumptions?

A. Again, I don't specifically recall that. My understanding was, that would be part of the deal, and they would have been done and would have been part of the package.

Q. Let's move on to another document. The next document is a document marked as Exhibit 86. It's an e-mail from Doug Muir to Susan Menkhaus, dated September 10th, 2001. It bears Bates stamp number CSPB-186652.

A. I have that.

Q. Have you had a chance to review this document?

A. I have it in front of me. I can take a few

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BY MR. YUN:

Q. In paragraph 4 of this document, there is a discussion about whether the investment vehicle could qualify as a bankruptcy remote structure.

Did you have a concern at that time whether Oakwood Homes would file for bankruptcy?

MR. WILLIAMSON: Objection to form.

THE WITNESS: I don't specifically recall what my concern was at that time, whether or not that was something that our attorneys, Berkshire's attorneys, and I had discussed.

But back in July of '01, you know, from the get-go, you know, it was clear that bankruptcy was, you know, certainly a potential for this firm. It wasn't what we'd hoped it would be, but we knew it was a viab- -- you know, it was certainly a good possibility.

BY MR. YUN:

Q. In paragraph 7 of this same e-mail, you wrote that the deal is subject to an audit of the assumption. What did you mean by an audit?

MR. WILLIAMSON: Objection.

THE WITNESS: By that time, Credit Suisse, I believe, had offered to have the assumptions that were used as part of the agreement -- that they would

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minutes to do so, if you'd like.

Q. Why don't you do that.

A. (Pause.) All right.

Q. Do you recall whether there was an interest shortfall in the first months of the Lotus transaction?

MR. WILLIAMSON: Objection to form.

THE WITNESS: I believe that is accurate.

BY MR. YUN:

Q. Now, in paragraph 2 of this e-mail, Doug Muir states that this particular B-2 security has not been paid because it's subordinated.

Were you aware that some of the B-2 securities in the Lotus transactions were subordinated?

MR. WILLIAMSON: Objection.

THE WITNESS: I was not aware of that fact prior to the purchase of those B-2s.

BY MR. YUN:

Q. I'd like to move on to another document. It's a document previously marked as Exhibit 119. It's an e-mail dated September 27, 2001. It's an e-mail from you to Susan Menkhaus and signed by Fiachra O'Driscoll.

A. I have that now.

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1 Q. Do you recognize this e-mail, Mr. Millard?

2 A. It does appear to be an e-mail that I sent,

3 yes.

4 Q. In the last paragraph, you requested monthly

5 reports for delinquencies, losses and prepayments.

6 Did you get monthly reports from Credit

7 Suisse?

8 A. Yes, we did ultimately receive monthly

9 reports.

10 Q. You stated "ultimately." Does that mean

11 there was some delay in getting the monthly reports?

12 MR. WILLIAMSON: Objection to form.

13 THE WITNESS: My recollection is is that we

14 may not have received the first month. We ultimately

15 received them, but -- there was some error in terms

16 of getting them to us, but we ultimately started

17 receiving monthly reports.

18 BY MR. YUN:

19 Q. I'd like to have you take a look at

20 Exhibit 90. It's an e-mail from Susan Menkhaus to

21 Fiachra O'Driscoll, dated December 3rd, 2001. It's

22 Bates-stamped CSFB-188026 to -27.

23 A. I have that.

24 Q. Have you had a chance to look at this

25 e-mail?

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1 A. I went through several of the documents. I

2 did not go through them all, so I have them in front

3 of me. If there's a specific section you'd like to

4 discuss, that would be fine.

5 Q. In the top paragraph, Susan Menkhaus refers

6 to the LAP, and explains that the LAP is causing the

7 delinquencies.

8 Was this information shared with you in

9 December 2001?

10 MR. WILLIAMSON: Objection.

11 THE WITNESS: December 2001? I don't recall

12 talking about that either way.

13 BY MR. YUN:

14 Q. Let's move on to another document. Can you

15 find Exhibit 30. It's an e-mail from Jared Felt to

16 Fiachra O'Driscoll, dated November 7th, 2002, and

17 it's stamped CSFirstBoston-11143.

18 MR. KLAUS: November 7, 2002?

19 MR. YUN: That's correct.

20 THE WITNESS: I have it.

21 MR. KLAUS: Okay.

22 THE WITNESS: I do have that.

23 BY MR. YUN:

24 Q. Have you had a chance to review this e-mail?

25 A. I will. It's short. If you'd give me just

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1 a few seconds.

2 Q. Sure.

3 A. (Pause.) All right.

4 Q. Were you aware, on November 7, 2002, that

5 there was a problem with the debtor-in-possession

6 financing?

7 MR. WILLIAMSON: Objection to form.

8 THE WITNESS: I don't recall I was aware of

9 a problem on that date, no.

10 BY MR. YUN:

11 Q. Did Jared Felt or Fiachra O'Driscoll contact

12 you about Foothill's issues with the debtor-in-

13 possession financing on November 7, 2002, or shortly

14 thereafter?

15 MR. WILLIAMSON: Objection.

16 THE WITNESS: Unfortunately, I don't

17 specifically recall the conversation with them

18 regarding that issue.

19 BY MR. YUN:

20 Q. Let's then move on to the next document.

21 It's a document previously marked as Exhibit 33.

22 It's an e-mail from Jared Felt to Fiachra O'Driscoll,

23 dated November 14, 2002, and it's Bates-stamped

24 CSFB-41242.

25 A. All righty.

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1 Q. Have you had a chance to review this e-mail?

2 A. Yes, just now.

3 Q. Now, in the last paragraph, Jared Felt

4 states: "I would like to call Mark."

5 Did Jared Felt or Fiachra O'Driscoll call

6 you on November 14, 2002, to discuss Foothill's

7 debtor-in-possession financing?

8 MR. WILLIAMSON: Objection.

9 MR. KLAUS: I'm sorry, I missed the

10 question.

11 BY MR. YUN:

12 Q. Did Jared Felt or Fiachra O'Driscoll, on

13 November 14, 2002, call you to discuss debtor-in-

14 possession financing from Foothill?

15 MR. WILLIAMSON: Objection.

16 THE WITNESS: I do recall, at some point, we

17 talked about the DIP facility. Whether or not it was

18 on that date or the -- I don't recall, and I'm sorry,

19 I just couldn't tell you, one way or the other.

20 BY MR. YUN:

21 Q. Now, in the e-mail, Mr. Felt states:

22 "It has a couple of unacceptable

23 provisions...."

24 Do you have any recollection of what those

25 unacceptable provisions were?

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MR. WILLIAMSON: Objection.

MR. KLAUS: Yeah, I would object to the form

as well. It does assume facts for this witness.

But I assume that you use it, if Mr. Millard has any recollection of any unacceptable provisions in a term sheet that's referenced here -- your question is if he explain those?

MR. YUN: That's correct.

THE WITNESS: I don't recall what the specific issues were, the unacceptable provisions. I was not on point with the DIP at this time, so I would -- I don't recall what those unacceptable provisions might have been.

Again, at some point in time, we actually were part of the ultimate DIP facility that was accepted by the Court, but the timing of that is just -- I'm struggling with it, you know, what we knew and when, I guess.

BY MR. YUN:

Q. Let's move on to another document.

MR. WILLIAMSON: Scott, this is Justin. I'm just going to interject here that it's about 5:44, and, you know, taking into account the fact that we took about a ten-minute break in the middle, we've gone a little over an hour and a half here, and in an

now, there's not an issue, so we're wasting more time by fighting over this.

Why don't you give me about five to ten minutes to finish, you ask your questions. If it turns out we run out of time, and that becomes an issue for Mr. Millard, we will try to work it out, but right now, it's not really an issue.

MR. OSNATO: It's not an issue, because you've missed the point of what I said. I don't want to get into a disagreement and waste anyone's time here. My point is simply that we had a prior commitment to divide this deposition equally, and you've since gone over that.

I'm willing to give you a few minutes to wrap up, but I'm not willing to give you ten minutes, and then say it's up to you to use whatever time you need, and we'll deal with the issue later if you, in fact, need more time.

But I would respectfully ask that you wind up your questions in the next three minutes, we'll move very expeditiously through ours, and we can conclude this deposition.

MR. YUN: Sure. Why don't I just start, then.

Q. Mr. Millard, I would like to refer you to a

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effort to try and -- we actually do have some questions we'd like to ask Mr. Millard, and I'm cognizant that we've promised he and his counsel that we would try for two hours, although we do have the ability to go longer. So we'd like to begin with our side.

MR. YUN: Yeah, I'm almost finished.

MR. OSNATO: Well, Scott, I'm sorry. This is Mr. Osnato speaking. Almost finished, unfortunately, is not good enough, because the agreement we had with your colleague was that each side would be allocated 90 minutes, and you've gone over your 90 minutes.

I appreciate there's more ground you may wish to cover, but in the interest of fairness, I don't know how many minutes I will need, but until I begin my questioning, I can't give up time that I've already reserved to Credit Suisse.

So therefore, we're going to insist that you -- we'll give you the benefit of finishing whatever line of questioning you have open, but we're not going to allow you to take our time.

MR. YUN: Whether or not you run out of time is still hypothetical right now. Maybe that becomes an issue at the end of this deposition, but right

document previously marked as Exhibit 127. It's an e-mail dated November 19, 2002, from you to Mr. O'Driscoll, Connors and Susan Menkhaus, and it's Bates-stamped CSFB-58243.

A. I have it.

Q. It mentions Mr. Davidson in a paragraph designated as paragraph A. Can you tell me who Mr. Davidson is.

MR. KLAUS: I'm sorry, Scott, can you give me the exhibit number. We missed that.

MR. YUN: Oh, sorry. It's 127.

MR. KLAUS: Thank you.

THE WITNESS: Mr. Davidson is, I believe, Andrew Davidson, who was at a company that provided cash flow information, certainly, in the manufacturing housing space. And I believe he was actually hired and worked in the bankruptcy case, if memory serves.

BY MR. YUN:

Q. I'd like to refer you to Exhibit 130. It's an e-mail from you, dated November 23rd, 2002, to Fiachra O'Driscoll --

A. Yes.

Q. -- on November 23rd, 2002. It's Bates-stamped CSFB-514175 to -76.

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1 A. Okay.

2 Q. On the second page of that document, towards

3 the bottom, there's a paragraph marked paragraph "1.

4 Andrew Davidson," and it states:

5 "Someone needs to figure out how

6 badly his model may have misrepresented

7 the Lotus cash flows."

8 Can you describe for me your statement.

9 MR. KLAUS: Objection. Do you mean -- I'm

10 sorry, describe -- I think the document speaks for

11 itself. Do you mean to ask him what he meant by it?

12 MR. YUN: Yes.

13 THE WITNESS: At this point in time, I

14 believe it became clear that there were concerns over

15 the validity of the models run by Mr. Davidson, and

16 at some point in time, we found out that his model

17 really did not accurately represent the cash flows

18 with the corporate guarantees, and that there were,

19 you know, concerns that there might be larger

20 problems.

21 BY MR. YUN:

22 Q. Do you recall whether Andrew Davidson's

23 model was created before or after the Lotus

24 transactions?

25 A. I don't recall that.

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1 Q. I just have two questions, and then I'm

2 done.

3 Mr. Millard, did you believe Credit Suisse

4 had any conflict of interest in dealing with the

5 Lotus transactions?

6 MR. WILLIAMSON: Objection.

7 THE WITNESS: Credit Suisse was a financial

8 advisor to the company, and also working with us to

9 get us information.

10 I believe it was made clear, in one of the

11 e-mails that I sent, that, you know, I thought that

12 they were in a conflict of interest as it results --

13 or as it pertained to that warehouse line being

14 pulled at the same time they were a financial

15 advisor, without having a replacement line available.

16 BY MR. YUN:

17 Q. Mr. Millard, I thank you very much for

18 taking the time for this deposition. I am now going

19 to turn this over to counsel for Credit Suisse.

20 MR. OSNATO: Thank you, Mr. Yun. This is

21 Mr. Osnato, speaking from Linklaters.

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EXAMINATION

1 EXAMINATION

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3 BY MR. OSNATO:

4 Q. Mr. Millard, I will try and be very brief,

5 and if not measured in seconds, certainly minutes.

6 The first question I have for you, sir,

7 relates to your testimony concerning the initial

8 meeting between representatives of Oakwood Homes,

9 Credit Suisse and Berkshire Hathaway in July 2002.

10 And do you recall testifying, sir, that it

11 was highly unusual, if not unprecedented, for --

12 MR. KLAUS: I'm sorry, somebody's moving

13 papers around, and I just can't hear anything.

14 MR. YUN: Oh, sorry about that.

15 MR. OSNATO: That's fine. Let me begin the

16 phrase again.

17 Q. In connection with the July 2002 meeting in

18 Omaha involving the company Oakwood Homes, Credit

19 Suisse and Berkshire Hathaway, am I correct, sir,

20 that you testified that it was highly unusual, if not

21 unprecedented, for Berkshire Hathaway to grant an

22 audience to management of companies in which it had

23 purchased an interest?

24 A. That was -- from my perspective, the ones

25 that I was involved in, that was not our normal

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1 course, that's correct.

2 Q. And am I correct, sir, that an audience was

3 granted to management of Oakwood Homes on at least

4 two occasions, the first being July 2002, the second

5 being October 2002?

6 A. I believe that's correct.

7 Q. And would I, therefore, be correct -- well,

8 strike that.

9 Do you believe, sir, that in your view,

10 Credit Suisse provided good service to its client,

11 Oakwood Homes, in delivering an audience with

12 yourself and Mr. Buffett?

13 MR. KLAUS: Objection, lacks foundation,

14 calls for speculation and opinion testimony.

15 Mr. Millard, if you had a belief, one way or

16 the other, with respect to that, you're free to

17 testify to it.

18 BY MR. OSNATO:

19 Q. The question, to be clear, sir, is

20 predicated on your own view of the matter, and

21 whether, in your opinion or view, Credit Suisse

22 served its client, Oakwood Homes, well in managing to

23 procure not one, but two audiences with yourself and

24 Mr. Buffett?

25 MR. KLAUS: And I will just say, Counsel, my

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1 only objection is that the witness is here to testify  
2 to his own understanding and his own views that they  
3 had at the time. He's not here to be an expert  
4 witness for either side.

5 So I would say, Mr. Millard, if you had an  
6 opinion, one way or the other, in that regard, that  
7 you can remember at this time, you're certainly free  
8 to testify to it.

9 Otherwise, if it's a question to ask you to  
10 sit here today and offer your opinion on that, I  
11 would object, and I'd need a little more foundation  
12 before I'd let the witness answer.

13 BY MR. OSHATO:

14 Q. Mr. Millard, you can go ahead and answer,  
15 please.

16 A. As I recall the way that came about, just  
17 for the record, was, my relationship with Tom Connors  
18 was pushing for that meeting, and I granted that as a  
19 favor to him, you know. And my recollection is is  
20 that, you know, I asked my boss, Mr. Buffett, would  
21 he be available for that, again as a favor to Tom,  
22 since Tom's relationship with me went back quite a  
23 ways.

24 Q. Thank you. You also testified, Mr. Millard,  
25 that in the course of the initial negotiations over

1 A. In my experience, that is not unusual. That  
2 is not an unusual event.

3 Q. Mr. Millard, in the course of all of your  
4 dealings with Credit Suisse involving Oakwood Homes  
5 in any capacity, did anyone from Credit Suisse ever  
6 tell you that they were providing you with  
7 information that Oakwood Homes had provided Credit  
8 Suisse in confidence and had asked it not to share  
9 with Berkshire?

10 A. I don't recall that being the case. I don't  
11 recall a case of that.

12 Q. Thank you. And then finally, sir, I just  
13 want to briefly touch upon your testimony concerning  
14 the fee that Credit Suisse proposed as a condition  
15 for making the warehouse line available following the  
16 bankruptcy.

17 Do you recall your testimony to that effect?

18 A. Yes, for the most part.

19 Q. And you testified that you were displeased  
20 that Credit Suisse was seeking to impose a \$3 million  
21 fee; is that right?

22 A. Yes, sir.

23 Q. What was the basis for your conclusion or  
24 belief that Credit Suisse was simply using the  
25 \$3 million fee as a back door to procure some of its

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1 the Lotus I transaction, which is the same summer of  
2 2001, you don't recall having any interaction or  
3 direct communications with representatives of Oakwood  
4 Homes; is that correct?

5 A. That's my recollection.

6 Q. Is that uncommon in your business; i.e., for  
7 you to negotiate directly with a dealer such as  
8 Credit Suisse when you're negotiating the terms of  
9 the purchase of securities?

10 A. I would say -- is that -- I'm sorry, one  
11 more time.

12 Q. That's fine. Let me then begin at the  
13 beginning again.

14 Your testimony, as I understand it, was that  
15 in the course of your negotiations in July of 2001,  
16 you did not communicate directly with representatives  
17 or management of Oakwood Homes. Is that correct?

18 A. Right.

19 Q. My question, simply, is: Is that  
20 arrangement unusual in your line of business?

21 A. No, I don't believe it is.

22 MR. KLAUS: And Mr. Millard, I'm sorry. You  
23 can again testify to your experience.

24 BY MR. OSHATO:

25 Q. Correct. That's all I'm looking for.

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1 investment banking fees?

2 A. The first part of my response is, because it  
3 was not something that Credit Suisse and Berkshire  
4 negotiated, we negotiated to be a part of the -- to  
5 keep the line open, we came to an agreement on that,  
6 and then only afterwards, days afterwards, did it  
7 become clear to me that they were trying to add a lot  
8 more cost to the company.

9 Q. Uh-huh.

10 A. The second part of the response is that I  
11 knew that they were not -- you know, I knew that they  
12 had concerns over the investment banking fees that  
13 they might not otherwise obtain, and when the fee on  
14 the warehouse reopening line came up, again, as I  
15 stated, it was my opinion that that was just a way to  
16 back-door the fees.

17 Q. Were you aware at the time, Mr. Millard --  
18 the time being approximately November of 2002 -- that  
19 under the existing warehouse line, the event of  
20 bankruptcy was a default under the warehouse  
21 agreement?

22 A. Prior to their coming to us with that whole  
23 warehouse issue, I was not aware of the warehouse  
24 language at all.

25 Q. Do you recall any discussions, with

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1 Mr. O'Driscoll or anyone else at Credit Suisse, about  
2 Credit Suisse's concern about taking on additional  
3 risk and exposure to Oakwood Homes following the  
4 bankruptcy?

5 A. Are we talking specifically about the  
6 warehouse line or any exposure?

7 Q. Yes, I am. And thank you for that  
8 clarification. So let me, with that caveat in mind,  
9 rephrase and put a direct question to you.

10 A. Sure.

11 Q. In connection with your discussions with  
12 Credit Suisse over the reopening of the warehouse  
13 line, did anyone from Credit Suisse express to you  
14 concerns that Credit Suisse had about taking on  
15 additional exposure or risk by making the warehouse  
16 available post bankruptcy?

17 A. My specific recollection is that Credit  
18 Suisse had a concern over all warehouse lines, not  
19 just Oakwood Homes -- and in fact, I believe John  
20 Mack's picture was in The Wall Street Journal that  
21 same day we discussed it -- and that they were  
22 looking to reduce exposures -- these types of  
23 exposures overall, not just necessarily Oakwood.

24 So I am familiar with -- my recollection is  
25 that there was concern over warehouse lines in

1 that there had to be even more collateral than there  
2 was prior. And in fact, I believe Credit Suisse  
3 would also agree that that line was a very, very  
4 solid line.

5 They were not really, you know, allowing  
6 much cash to go out of the collateral, much less so  
7 than it was prior. So I would say that there was  
8 very, very little risk on that end. In fact, less so  
9 than there was prior.

10 Q. Now I'd like to ask you, sir, just one or  
11 two more general questions before I conclude, and the  
12 first question is this:

13 In the course of arranging for this  
14 deposition, have you had any conversations with  
15 counsel for the Trust, Stutman Treister, about any  
16 matters other than scheduling your deposition or  
17 providing documents?

18 A. I believe any conversation we've had was  
19 regarding scheduling more than -- regarding the  
20 scheduling of said deposition and rescheduling same.

21 Q. So am I therefore correct, you've had no  
22 discussions of any substance concerning the  
23 allegations of the lawsuit with counsel for the  
24 Trust?

25 A. Yes, I believe that to be correct.

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1 general. Does that answer your question?

2 Q. It does. Thank you very much.

3 Was that concern put to you directly by  
4 either Mr. Connors or Mr. O'Driscoll?

5 A. Yes, sir. I don't recall which, but it was  
6 certainly, you know, made clear to me.

7 Q. With that piece of context in place, is it  
8 possible, sir, that some or all of the \$3 million fee  
9 was proposed by Credit Suisse in order to compensate  
10 it for the risk of taking on the warehouse line post  
11 bankruptcy?

12 MR. KLAUS: I object that the question calls  
13 for speculation.

14 MR. YUN: I join the objection.

15 BY MR. OSWATO:

16 Q. You can answer, sir.

17 MR. KLAUS: if you have a basis for an  
18 understanding one way or the other, you can answer,  
19 Mr. Millard.

20 THE WITNESS: I do, and I would say no.

21 BY MR. OSWATO:

22 Q. And why is that?

23 A. The line that was ultimately renegotiated  
24 was a very solid warehouse line, that the ability to  
25 allow the company to borrow cash was changed such

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1 Q. Okay. Now, shifting gears for a moment to  
2 the topic of settlement discussions in this case.

3 Have you, in your capacity as an officer or  
4 employee of Berkshire Hathaway, any discussions with  
5 either the Creditors' Committee for the Oakwood  
6 Estate or the Advisory Committee for the Liquidation  
7 Trust on the topic of settlement of this lawsuit?

8 A. I've spoken with a gentleman named Matt  
9 Kvarda, who is, I think, on the Liquida- -- or  
10 involved in this case from time to time, and that's  
11 pretty much the one that I've spoken to, other than  
12 my counsel.

13 Q. Fair enough. Could you please tell us what  
14 you recall about your discussions with Mr. Kvarda on  
15 the topic of settlement of this adversary proceeding.

16 A. From time to time, I would just send an  
17 e-mail to Matt to find out what was going on with the  
18 open case, the open claims, and I would generally  
19 receive information back that would get me some  
20 documentation -- not documentation, but information  
21 about how many claims are open, et cetera.

22 Specifically to your question, you know, I  
23 was aware that there were some ongoing negotiations,  
24 and meetings to take place, but I kind of stayed out  
25 of it at that point in time.

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1 Q. And so am I therefore correct that you never  
2 expressed a view or an opinion that the case should  
3 settle for a certain amount?

4 A. I never expressed a view in terms of a  
5 dollar amount. You know, I tried to let that be  
6 their decision.

7 Q. And am I correct, sir, that the reason for  
8 your general discussions about the progress of  
9 settlement with Mr. Kvarda were prompted by Berkshire  
10 Hathaway's status as a creditor in this matter?

11 A. Yes.

12 Q. At any point in time, has Mr. Kvarda  
13 indicated to you whether he believed Credit Suisse  
14 would settle this matter?

15 A. I don't know if that was through Matt or Tom  
16 Connors, but at one point in time, I got involved to  
17 see if Tom would -- Tom Connors would get the  
18 "business folks" together to see if this thing could  
19 be settled. Ultimately, I believe a meeting took  
20 place, but it did not settle.

21 Q. All right, thank you. Thank very much for  
22 that response. That concludes all the questions I  
23 have, so on behalf of Credit Suisse, I thank you very  
24 much for your time.

25 MR. YUN: Can we go off the record for a

1 MR. YUN: Okay, that's the way it's going to  
2 be. Thank you, everyone.

3 (At the hour of 3:05 p.m. the  
4 deposition was adjourned.)  
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1 minute?

2 MR. KLAUS: Yes, we can.  
3 (Discussion off the record.)

4 MR. YUN: The parties stipulate that the  
5 reporter is relieved of his responsibilities under  
6 the Federal Rules with respect to the original  
7 deposition transcript; that the original deposition  
8 transcript should be transmitted to counsel for  
9 Mr. Millard, who will arrange to get it to the  
10 witness; and the witness will have three weeks from  
11 the time the transcript is received to review it,  
12 correct it, sign it under penalty of perjury;

13 Mr. Millard will notify me and counsel for  
14 Credit Suisse by facsimile if there are any changes;  
15 if there are no changes, a certified copy may be used  
16 for any purpose that the original could be used.

17 And Mike...

18 MR. OSNATO: Yes?

19 MR. YUN: Mr. Osnato, I forget who keeps the  
20 original in this case. What's our -- do you guys  
21 keep your depositions, and we keep our original  
22 depositions?

23 MR. OSNATO: I think that's right, Scott.  
24 And let's plan on that, and if I learn otherwise,  
25 I'll let you know.

1 D E C L A R A T I O N  
2

3 I hereby declare I am the deponent in  
4 the within matter; that I have read the foregoing  
5 deposition and know the contents thereof, and I  
6 declare that the same is true of my knowledge  
7 except as to the matters which are therein stated  
8 upon my information or belief, and as to those  
9 matters, I believe it to be true.

10 I declare under the penalties of  
11 perjury of the State of California that the foregoing  
12 is true and correct.

13 Executed this day of  
14 2007, at , California.  
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W I T N E S S

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1 STATE OF CALIFORNIA }

2 } ss.

3 COUNTY OF LOS ANGELES }

4 I, Alfred J. Long, CSR No. 2024 for the  
5 State of California, do hereby certify:

6 That prior to being examined, the witness  
7 named in the foregoing deposition was duly sworn to  
8 testify the truth, the whole truth, and nothing but  
9 the truth;

10 That said deposition was taken down by me in  
11 shorthand at the time and place herein named and  
12 thereafter reduced by me to typewritten form, and  
13 that the same is a true, correct and complete  
14 transcript of said proceedings.

15 Before completion of the deposition, review  
16 of the transcript [ x ] was [ ] was not requested.  
17 If requested, any changes made by the deponent (and  
18 provided to the reporter) during the period allowed  
19 are appended hereto.

20 I further certify that I am not interested  
21 in the outcome of the action.

22 WITNESS my hand this 28th day of September,  
23 2007.

24

25 ALFRED J. LONG CSR No. 2024

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***EXHIBIT Y***

**In The Matter Of:**

***In re: OAKWOOD HOMES CORPORATION/OHC LIQUIDATION v.  
CREDIT SUISSE FIRST BOSTON***

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**DOUGLAS R. MUIR**

***September 26, 2006***

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**LEGALINK MANHATTAN**

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**MUIR, DOUGLAS R. - Vol. 1**



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\* \* \* \* \*

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26/09/2006 MUIR, Douglas R. (vol.1)

Videotape Deposition of DOUGLAS MUIR, VOLUME 1,  
taken by the Plaintiff, at the Marriott Hotel, 425  
North Cherry Street, Winston-Salem, North Carolina,  
on the 9th day of September, 2006 at 8:40 a.m.,  
before A. Denise Neal, Registered Professional  
Reporter and Notary Public.

\* \* \* \* \*

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THE WITNESS: DOUGLAS R. MUIR                      EXAMINATION  
BY MS. WARREN    6

\* \* \* \* \*

26/09/2006 MUIR, Douglas R. (vol.1)

1                      THE VIDEOGRAPHER: We're on the record at  
2                      9:26 -- I mean, sorry -- 8:40. I'm sorry.  
3                      Today's date is 9-26, September 26th, 2006.  
4                      This is the deposition of Douglas Muir taken in  
5                      the matter of In Re: Oakwood Homes Corporation,  
6                      et al., Debtors, and OHC Liquid Trust,  
7                      Plaintiff, versus Credit Suisse First Boston, et  
8                      al., Defendants, in the United States Bankruptcy  
9                      Court, District of Delaware.  
10                     This deposition is being held at 425 North  
11                     Cherry Street, Winston-Salem, North Carolina.  
12                     My name is Donald Graves. The court reporter is  
13                     Denise Neal. Will counsel introduce themselves  
14                     for the record, please?  
15                     MS. WARREN: Mary Warren of Linklaters for  
16                     the Defendants. And with me is my colleague,  
17                     Justin Williamson.  
18                     MR. CASTANARES: Tony Castanares of  
19                     Stutman, Treister & Glatt for the Plaintiff.  
20                     THE VIDEOGRAPHER: Will the court reporter  
21                     please place the witness under oath?  
22                     DOUGLAS R. MUIR,  
23                     having been first duly sworn, was examined and  
24                     testified as follows:  
25                     ///

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## EXAMINATION

BY MS. WARREN:

Q. Good morning, Mr. Muir. My name is Mary Warren. I'm from the law firm of Linklaters and I'll be asking you questions today on behalf of the Defendants in the litigation brought by the Liquidation Trust of Oakwood Homes. Have you had your deposition taken before?

A. Yes.

Q. Then I think you know the ground rules, so I'll just repeat them briefly. If at any time you don't understand a question that I ask you, let me know and I'll repeat it or restate it for you. If you answer a question, I'll assume that you understood it. If at any time you need a break in the proceedings, just let us know and you'll have one. Is that all right with you?

A. Yes.

Q. Are you feeling competent today to testify? You're not on any medication or anything that might interfere with your ability to testify?

A. Not that I know of.

Q. Would you please state your full name and your address for the record?

A. Douglas Robertson Muir, 4200 Cranleigh

Q. When did Oakwood become your client?

A. As best I can recall, 1977.

Q. What services did you perform for Oakwood?

A. Well, a number of them. The ones in which I was directly involved were audit services.

Q. Why did you leave Price Waterhouse?

A. I got tired of being an auditor.

Q. What did you do after you left?

A. I went to work for Oakwood Homes.

Q. What position did you start in at Oakwood?

A. As best I recall, treasurer.

Q. Who were you reporting to?

A. Mike Kilbourne.

Q. Before you joined Oakwood had you had any management experience before?

A. I had had management experience at Price Waterhouse.

Q. By virtue of being a partner there?

A. And a manager, and a senior manager and other supervisory positions.

Q. Did you have any other manufactured homes clients when you were at Price Waterhouse?

A. No.

(Discussion off the record.)

MS. WARREN: I'm asking the court reporter

6

8

26/09/2006 MUJR, Douglas R. (vol.1)

26/09/2006 MUJR, Douglas R. (vol.1)

Drive, Greensboro, North Carolina 27407.

Q. Mr. Muir, let's start with talking about you a little bit. Would you tell me about your education beginning with college?

A. I went to Washington and Lee University in Virginia and graduated in 1976.

Q. And what did you do after that?

A. I went to work for Price Waterhouse.

Q. How long were you at Price Waterhouse?

A. Seventeen years.

Q. Would you take me through your positions briefly if you can?

A. I began as a staff accountant in 1976. Over the next 12 years I had a series of positions. I was admitted as a partner in nineteen ninety -- excuse me -- 1988 and I left in 1993.

Q. Which office were you working in?

A. Three offices, Winston-Salem first, then briefly in Johnson City, Tennessee, and finally in Charlotte.

Q. And you left in 1994?

A. 1993.

Q. Was Oakwood Homes one of your clients when you were at Price Waterhouse?

A. Yes.

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MR. WILLIAMSON: We just ran a copy of that and for some reason the copy down stairs is not picking up the bottom, the Bates number.

MR. CASTANARES: Okay.

Q. (By Ms. Warren) Do you recognize this document?

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A. It's hard to remember over an extended

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1 period of time, but it looks substantially correct to  
2 the best of my recollection.

3 Q. Did you start at Oakwood Homes in 1993 or  
4 1994?

5 A. 1993.

6 Q. And you started in the position of  
7 treasurer; correct?

8 A. Correct.

9 Q. What was your next position at Oakwood?

10 A. There were a number of title changes over  
11 the year. At some point, I can't remember when, I  
12 think the title senior vice president was added. At  
13 some point it was changed to executive vice  
14 president. Somewhere along the line I became the  
15 corporate secretary, but I had all of those titles at  
16 different times over the 12 or so -- 11 years I was  
17 there.

18 Q. Focusing on the period 1999 to the  
19 petition date, and by petition date I mean the date  
20 when Oakwood filed for chapter 11 relief, what were  
21 your positions during that period?

22 A. Most of that time I think the title at all  
23 of those times was executive vice president,  
24 secretary and treasurer.

25 Q. Who did you report to during that time?

10

25/09/2006 MUIR, Douglas R. (vol.1)

1 A. And this is 1999 through the petition  
2 date?

3 Q. That's right.

4 A. Different people at different times, but  
5 to the best of my recollection initially I reported  
6 to Bob Smith for a brief period of time and then may  
7 have reported to Duane Daggett. I definitely  
8 reported to Myles Standish. The reporting lines  
9 became a little blurred.

10 Q. Did you generally report to whoever was  
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12 A. No. I generally reported to whoever was  
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14 I reported to the CEO.

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16 1999 to the petition date you reported either to the  
17 CFO or the CEO or perhaps both?

18 A. To the best of my recollection, yes.

19 Q. During that same period, 1999 to the  
20 petition date, what were generally your  
21 responsibilities?

22 A. I was principally involved in financing  
23 the business.

24 Q. What did that involve?

25 A. Among other things, negotiating bank

1 credit lines, secured credit facilities, unsecured  
2 credit facilities, supervising the process of  
3 securitizing loan production out of the mortgage  
4 company, creating asset backed securities to liquify  
5 those assets, arranging warehousing facilities to  
6 finance those assets pending securitization, treasury  
7 management, cash flow management and similar  
8 functions.

9 Q. Who was responsible for selecting the  
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12 A. I think I could best characterize that as  
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14 I made exclusively. I'd discuss it with Bob, I'd  
15 discuss it with Myles and we would collectively make  
16 a decision as to which underwriters would be involved  
17 in a particular transaction.

18 Q. And focusing again on the period 1999 to  
19 the petition date, what were management's criteria  
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21 securitization?

22 A. There were two principal criteria as best  
23 I can recollect, the first and most important being  
24 we wanted an investment banker that could  
25 successfully market the securities, achieve the

12

25/09/2006 MUIR, Douglas R. (vol.1)

1 highest dollar price for the securities given the  
2 collateral that was in them, insure, you know, a  
3 seamless execution of the transaction, gain broad  
4 distribution for the bonds, basically a skills based  
5 approach of who had the best capabilities to perform  
6 the work.

7 Secondly, we awarded at times some  
8 position in the underwriting group to investment  
9 banking firms whose parent banks had a credit  
10 relationship with the company.

11 Q. And what was the purpose of awarding that  
12 business to a bank whose parent company had a credit  
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14 A. It was principally to reward the credit  
15 providers, that is, banks which provided credit to  
16 the company, to reward them for their financial  
17 support of the company in the form of a credit  
18 arrangement, credit facilities with some fee based  
19 investment banking work.

20 Q. During the 1990s, and I realize it's a  
21 broad time period, but after you started at Oakwood  
22 who generally underwrote Oakwood's securitizations?

23 A. On substantially all of the transactions  
24 CSFB was the lead manager and book runner. There was  
25 I believe one transaction about 1996 in which they

11

13

***EXHIBIT Y***

**In The Matter Of:**

***In re: OAKWOOD HOMES CORPORATION/OHC LIQUIDATION v.  
CREDIT SUISSE FIRST BOSTON***

---

**DOUGLAS R. MUIR**

***September 26, 2006***

---

**LEGALINK MANHATTAN**

***420 Lexington Avenue - Suite 2108***

***New York, NY 10170***

***PH: 212-557-7400 / FAX: 212-692-9171***

**MUIR, DOUGLAS R. - Vol. 1**



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J. JUSTIN WILLIAMSON, Esq.

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New York, New York 10105

(212) 904 9000

(212) 903-9041 FAX

Michael.osnato@linklaters.com

Videographer:

Mr. Donald Graves

\* \* \* \* \*

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Videotape Deposition of DOUGLAS MUIR, VOLUME 1,  
taken by the Plaintiff, at the Marriott Hotel, 425  
North Cherry Street, Winston-Salem, North Carolina,  
on the 26th day of September, 2006 at 8:40 a.m.,  
before Denise Neal, Registered Professional  
Reporter and Notary Public.

\* \* \* \* \*

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THE WITNESS: DOUGLAS R. MUIR EXAMINATION

BY MS. WARREN

6

\* \* \* \* \*

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1 THE VIDEOGRAPHER: We're on the record at  
2 9:26 -- I mean, sorry -- 8:40. I'm sorry.  
3 Today's date is 9-26, September 26th, 2006.  
4 This is the deposition of Douglas Muir taken in  
5 the matter of In Re: Oakwood Homes Corporation,  
6 et al., Debtors, and OHC Liquid Trust,  
7 Plaintiff, versus Credit Suisse First Boston, et  
8 al., Defendants, in the United States Bankruptcy  
9 Court, District of Delaware.  
10 This deposition is being held at 425 North  
11 Cherry Street, Winston-Salem, North Carolina.  
12 My name is Donald Graves. The court reporter is  
13 Denise Neal. Will counsel introduce themselves  
14 for the record, please?  
15 MS. WARREN: Mary Warren of Linklaters for  
16 the Defendants. And with me is my colleague,  
17 Justin Williamson.  
18 MR. CASTANARES: Tony Castanares of  
19 Stutman, Treister & Glatt for the Plaintiff.  
20 THE VIDEOGRAPHER: Will the court reporter  
21 please place the witness under oath?  
22 DOUGLAS R. MUIR,  
23 having been first duly sworn, was examined and  
24 testified as follows:  
25 ///

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## EXAMINATION

BY MS. WARREN:

Q. Good morning, Mr. Muir. My name is Mary Warren. I'm from the law firm of Linklaters and I'll be asking you questions today on behalf of the Defendants in the litigation brought by the Liquidation Trust of Oakwood Homes. Have you had your deposition taken before?

A. Yes.

Q. Then I think you know the ground rules, so I'll just repeat them briefly. If at any time you don't understand a question that I ask you, let me know and I'll repeat it or restate it for you. If you answer a question, I'll assume that you understood it. If at any time you need a break in the proceedings, just let us know and you'll have one. Is that all right with you?

A. Yes.

Q. Are you feeling competent today to testify? You're not on any medication or anything that might interfere with your ability to testify?

A. Not that I know of.

Q. Would you please state your full name and your address for the record?

A. Douglas Robertson Muir, 4200 Cranleigh

Q. When did Oakwood become your client?

A. As best I can recall, 1977.

Q. What services did you perform for Oakwood?

A. Well, a number of them. The ones in which I was directly involved were audit services.

Q. Why did you leave Price Waterhouse?

A. I got tired of being an auditor.

Q. What did you do after you left?

A. I went to work for Oakwood Homes.

Q. What position did you start in at Oakwood?

A. As best I recall, treasurer.

Q. Who were you reporting to?

A. Mike Kilbourne.

Q. Before you joined Oakwood had you had any management experience before?

A. I had had management experience at Price Waterhouse.

Q. By virtue of being a partner there?

A. And a manager, and a senior manager and other supervisory positions.

Q. Did you have any other manufactured homes clients when you were at Price Waterhouse?

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25/09/2006 MUIR, Douglas R. (vol.1)

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23 A. On substantially all of the transactions  
24 CSFB was the lead manager and book runner. There was  
25 I believe one transaction about 1996 in which they

11

13

1 had no role, but to the best of my recollection they  
2 were the lead bank on every transaction from at least  
3 '96 forward.

4 Q. What was Merrill Lynch's role in relation  
5 to Oakwood?

6 A. Merrill in 1994 led the first Oakwood  
7 securitization -- where the securities were publicly  
8 offered. Oakwood was fired by Merrill Lynch. They  
9 declined to continue to do business with us and we  
10 went off in search of a new underwriter. Subsequent  
11 dates we occasionally invited Merrill to be a  
12 comanager on subsequent transactions.

13 Q. That was nice of you considering they  
14 fired you. When did Merrill Lynch fire Oakwood?

15 A. 1994.

16 Q. Why to the best of your knowledge?

17 A. The best of my understanding, they were  
18 told by Greentree, which was another finance company,  
19 that if Merrill wanted to continue to underwrite and  
20 be the lead underwriter on Greentree transactions  
21 that they should not be a lead underwriter on any  
22 other manufactured housing transactions.

23 Q. Did Merrill ever serve as a financial  
24 advisor to Oakwood?

25 A. To the best of my recollection we never

1 supervising the financial institutions who assisted  
2 Oakwood with securitizations and other financing?

3 MR. CASTANARES: Objection to form.

4 THE WITNESS: I was.

5 Q. (By Ms. Warren) Mr. Muir, what was  
6 Oakwood Acceptance Corporation?

7 A. It was a subsidiary of the parent company  
8 that was in the loan origination, mortgage loan  
9 business.

10 Q. And what, if any, was your role with  
11 respect to Oakwood Acceptance Corporation or OAC?

12 A. My involvement with OAC was limited to the  
13 process of obtaining interim financing for -- to  
14 finance loan production, that is, the origination of  
15 mortgage loans. We needed interim financing to be  
16 able to undertake that activity. I arranged that or  
17 participated in arranging it.

18 We needed permanent financing for those  
19 mortgage loans. That was the ABS securitization  
20 program. I ran that. Once the loans had been  
21 securitized, you had ongoing loan servicing  
22 activities, collect -- collection of payments,  
23 servicing of the securities. I didn't have anything  
24 to do with the loan servicing side, but I did have  
25 responsibility for all of the administrative aspects

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1 signed any engagement letter with Merrill with  
2 respect to any transactions. Merrill clearly was in  
3 the picture. We talked to them frequently. There  
4 were a number of occasions, I only have a general  
5 recollection of them, where Merrill did a fair amount  
6 of work I assume in the expectation that a  
7 transaction might be forthcoming and ideas we kicked  
8 around.

9 And so they were -- they offered us  
10 advice. They talked to us about ideas, but I don't  
11 recall that we ever signed an engagement letter with  
12 them where we agreed to pay them money for a  
13 transaction other than investment banking that  
14 related to the ABS program.

15 Q. During your tenure at Oakwood until  
16 Oakwood signed the financial advisor engagement  
17 letter with Credit Suisse in August of 2002, had  
18 Oakwood ever retained any financial institution to be  
19 a financial advisor?

20 A. I'm trying to search my memory here.  
21 Again, other than underwriting activities related to  
22 the sale of securities, be they ABS securities or  
23 corporate securities, I don't think we ever engaged a  
24 financial institution as a financial advisor.

25 Q. Who was in charge at Oakwood of

1 of servicing of the securities, investor reporting,  
2 for example.

3 Q. And what was your role, if any, with  
4 respect to Oakwood Mortgage Investors?

5 A. Oakwood Mortgage Investors, I think  
6 effectively I ran it.

7 Q. And what was Oakwood Mortgage Investors?

8 A. Oakwood Mortgage Investors was a special  
9 purpose subsidiary of Oakwood Acceptance whose sole  
10 function was to purchase mortgage loans from Oakwood  
11 Acceptance that had been originated in the OAC,  
12 Oakwood Acceptance business, and securitize those  
13 mortgage loans and create asset backed securities out  
14 of them. Those securities then in turn were sold to  
15 the public market.

16 Q. What was your role, if any, with respect  
17 to the OMI Note Trust 2001-A?

18 A. I participated in the putting together the  
19 broad series of entities and transaction structure of  
20 which OMI Note Trust 01-A was a part.

21 Q. Okay. Is that what you called it, OMI  
22 Note Trust?

23 A. Some people -- it had a lot of names.  
24 That was one of them.

25 Q. We'll use that one then. What was OMI

15

17

1 Note Trust?

2 A. OMI Note Trust was a special purpose  
3 entity whose purpose was to acquire indirectly  
4 mortgage loans that had been originated by Oakwood  
5 Acceptance and having acquired them, to pledge them  
6 as collateral to secure notes that OMI Note Trust  
7 issued to an investor.

8 Q. And what was OMI Note Trust? What was its  
9 corporate form?

10 A. It was a Delaware business trust. I  
11 believe.

12 Q. Did it have any relationship to Oakwood?

13 A. Yes, in that all of the beneficial  
14 ownership interests of OMI Trust were directly or  
15 indirectly owned by Oakwood.

16 Q. And was there a certain contract or form  
17 of incorporation or any particular document that  
18 described how the beneficial interests were in the  
19 possession of Oakwood?

20 A. There would be more than one. I think if  
21 we -- we could look at the records and look at the  
22 legal documents by which OMI Note Trust was created  
23 and I think we could sort through who owned those  
24 interests and then ultimately work our way down and  
25 look at that first level of entities and I think it

1 which set up OMI Note Trust there was a payment  
2 priority by which OMI Note Trust was supposed to  
3 dispose of its assets?

4 MR. CASTANARES: Objection to form.

5 THE WITNESS: One or more of the documents  
6 to which OMI Note Trust was a party, I don't  
7 remember which one, specified how the cash  
8 proceeds of all of OMI Note Trust's assets were  
9 to be distributed.

10 Q. (By Ms. Warren) Do you remember generally  
11 where Oakwood stood in that hierarchy of priorities?

12 MR. CASTANARES: Same objection.

13 THE WITNESS: In general to the best of my  
14 recollection the first obligation -- back up.  
15 The underlying documents provided that  
16 periodically cash would be distributed and I  
17 think that was a monthly process.

18 To the best of my recollection the first  
19 person to get paid was the trustee. The second  
20 person to be paid as I recall were the persons  
21 that owned the notes issued by Oakwood, OMI Note  
22 Trust.

23 Q. (By Ms. Warren) And who were those people  
24 or entities?

25 A. They were to the best of my knowledge most

18

20

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26/03/2006 MUIR, Douglas R. (vol.1)

1 could be traced back through the corporate records,  
2 but I don't think there's a single document that  
3 shows it all.

4 Q. Do you remember under what conditions the  
5 beneficial interests in the trust would revert to  
6 Oakwood?

7 MR. CASTANARES: Objection to form.

8 THE WITNESS: Let me answer that this way.

9 I don't want to practice lawyer because I'm not  
10 a lawyer and I'm not sure I know what a  
11 beneficial interest is, although I -- in plain  
12 English Oakwood owned the equity if you will  
13 interest in OMI Note trust. OMI Note Trust, the  
14 right hand side of its balance sheet had debt on  
15 it, it had equity, and Oakwood owned the equity.

16 Q. (By Ms. Warren) And what was the equity?

17 A. I think it could be fairly described as --  
18 as Oakwood's ownership in OMI Note Trust entitled  
19 Oakwood or an Oakwood entity to receive all of the  
20 proceeds of all of the assets of OMI Note Trust that  
21 weren't required to pay the indebtedness of the  
22 trust, interest on that indebtedness and fees and  
23 expenses related to that indebtedness.

24 Q. Is it fair to say that there was -- strike  
25 that. Is it fair to say that under the instruments

1 of the time CSFB or some CSFB related entity. And  
2 then when those obligations had been satisfied, I  
3 believe there was an obligation to pay Oakwood a  
4 servicing fee for servicing the assets owned by the  
5 trust. Then as I recall any residual cash left over  
6 at that point went back to another Oakwood entity.

7 Q. And that's the beneficial interest that  
8 you were talking about?

9 A. Yes.

10 Q. Do you remember which entity that would go  
11 to?

12 A. Now you are testing my memory. I'm not a  
13 hundred percent sure, but I think it's correct to say  
14 that the entity which received that residual cash  
15 flow if you will out of OMI Note Trust was an entity  
16 called Oak Leaf Holdings.

17 Q. You anticipated my next question, which  
18 was what was Oak Leaf Holdings?

19 A. It was yet another special purpose entity  
20 who I believe had no function other than to own what  
21 I loosely call the beneficial interest in OMI Note  
22 Trust.

23 Q. And what -- what was the ownership of Oak  
24 Leaf? Who was its parent, if any?

25 A. My recollection is that if not the sole

19

21

1 owner, the owner of the substantial majority of the  
2 interest in Oak Leaf were owned by a company called  
3 Oakwood Capital Corp.

4 Q. Did you say Oakwood Capital Corp?

5 A. Yes, ma'am.

6 Q. And what was the parent of Oakwood Capital  
7 Corp?

8 A. Oakwood Acceptance.

9 Q. What was your role, if any, with respect  
10 to Oakwood Capital Corp and Oak Leaf?

11 A. None directly because they were passive  
12 entities that were very important from a -- a legal  
13 structure point of view, but not important at all  
14 from a business point of view in terms of daily  
15 operation.

16 Q. What's your understanding of a special  
17 purpose entity? What is that?

18 A. Generically I think of a special purpose  
19 entity as some entity that is created for some  
20 singular purpose in some unique transaction or series  
21 of unique transactions rather than, for example,  
22 being a corporation that might be organized and  
23 entitled to do anything that was lawful, for example.

24 Q. What was Ginkgo?

25 A. Ginkgo was an entity that was part of the

1 different entities, and then sells commercial paper  
2 in the CP market backed by those various assets that  
3 the conduit has acquired from the various sellers.

4 I think it may -- often I thought of it as  
5 being called conduit because that entity provides  
6 access to the commercial paper market to a broad  
7 range of sellers who might not otherwise be able to  
8 access the CP market directly.

9 Q. During the period 1999 to the petition  
10 date how did Oakwood finance its business? And I  
11 realize that's a broad question so if you want to  
12 break it down into pieces, that's fine.

13 A. Okay. Several sources. First, operating  
14 cash flow to the extent that it existed. Second,  
15 bank credit facilities which were borrowings made to  
16 Oakwood or Oakwood entities by financial  
17 institutions, typically banks, and direct obligations  
18 of Oakwood. Might have been secured or unsecured at  
19 various points in time.

20 By 1999, if they weren't secured at the  
21 beginning of '99, they certainly were by the end.  
22 There were what we called warehousing facilities, and  
23 these are the facilities that I described earlier  
24 when I said that we needed short-term financing to  
25 finance mortgage loans that had been originated by

22

24

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1 group of entities surrounding OMI Note Trust.  
2 Ginkgo's was not owned by Oakwood. We had no equity  
3 interest in it at all.

4 Q. What was its purpose?

5 A. Its purpose was to purchase mortgage loans  
6 from Oakwood Acceptance and then simultaneously sell  
7 those mortgage loans to Oak Leaf Holdings.

8 Q. Who set up Ginkgo?

9 A. To the best of my recollection, counsel to  
10 the company did or I'm not sure. Either our counsel  
11 did or a service provider who's in the business of  
12 setting up special purpose entities set it up at  
13 our -- at our request.

14 Q. What was Alpine?

15 A. Here I'm a little less certain. My  
16 general understanding is that Alpine was a commercial  
17 paper conduit sponsored by CSFB, but I have no direct  
18 knowledge of that.

19 Q. What's conduit financing?

20 A. Again, I'm not a corporate finance expert.  
21 Conduit transactions in which I have been involved  
22 have generally been what's called multi-seller  
23 conduits in which an entity, often a trust, that is  
24 sponsored by a financial institution, typically a  
25 bank, acquires assets from a number of sellers.

23

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1 OAC.

2 Q. I'm sorry to stop you there. We're just  
3 trying to minimize the outside noise. Do you  
4 consider warehousing facilities to be a subcategory  
5 of bank credit facilities or something different?

6 A. They're a cousin. I wouldn't characterize  
7 them as a subcategory.

8 Q. Okay. So we have operating cash flow,  
9 bank credit facilities, warehousing facilities and  
10 what else?

11 A. Corporate debt. We had about \$300 million  
12 of senior unsecured debt of the parent that was  
13 issued I believe in 1999. We had -- I can't remember  
14 the timing on this, but along about 2001 had a  
15 structured finance facility that was called a  
16 servicing advance facility whose purpose was to  
17 borrow money from investors and use that money to  
18 acquire from Oakwood servicing advance assets that  
19 had been created by Oakwood in connection with its  
20 loan servicing.

21 Q. So it was a way of borrowing on your  
22 future servicing income?

23 A. Not exactly.

24 Q. How was that wrong, what I just said?

25 A. The servicing advance facility was

25

1 designed to provide liquidity to Oakwood Acceptance  
2 to enable it to make advances of monies which Oakwood  
3 was required to make under its servicing contracts.

4 Q. What other forms of financing did Oakwood  
5 use?

6 A. The ABS market was the source of the  
7 permanent financing for mortgage production, and  
8 there were a number of different types of ABC  
9 transactions that we did over the years.

10 Q. Any other source of financing?

11 A. There may be some others, but off the top  
12 of my head that's all I can think of.

13 Q. Let's focus on the corporate debt for a  
14 moment. Whose decision was it to issue the bonds due  
15 in 2004 and 2009?

16 A. Ultimately the board of directors made the  
17 decision and that we were -- we were required board  
18 approval to do it. So ultimately I think the board  
19 did it.

20 Q. Whose idea was it?

21 A. I don't remember specifically, but -- I  
22 don't remember.

23 Q. Was it someone in Oakwood's management?

24 A. I think that's a safe assumption. At the  
25 time the debt was issued there was a fair amount of

1 Bob's, was that the smart person would not rely  
2 exclusively on short-term credit and that if there  
3 were an opportunity to raise some long-term money,  
4 it's an opportunity that we should take advantage of,  
5 and we did.

6 Q. And that's what you recommended to the  
7 board?

8 A. Yes. We did recommend it to the board.

9 Q. Who underwrote those bonds?

10 A. To the best of my recollection they were  
11 underwritten by Bank of America Securities as the  
12 lead manager and book runner. And I believe First  
13 Union Securities and Merrill had small roles as  
14 comanagers.

15 Q. Did Credit Suisse have any role in the  
16 bond issuance or a decision to issue the bonds?

17 A. Not that I recall.

18 Q. Let's turn to the warehousing facilities  
19 that you described earlier. During the period 1999  
20 to the petition date what kind of warehousing  
21 facilities did Oakwood use?

22 A. We had two, the first of which was  
23 provided as I recall by Bank of America and the  
24 second of which was the OHF Note Trust facility that  
25 was created in February of 2001 and was provided by

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1 short duration credit on Oakwood's balance sheet,  
2 money that had to be paid back in the relatively near  
3 term. So to the best of my recollection our thinking  
4 at the time was that one shouldn't finance long-term  
5 capital needs exclusively with short-term money.

6 And, therefore, it might be a prudent  
7 business decision to term out if you would some  
8 short-term money and raise some five and ten-year  
9 money that would be consistent with where the cash  
10 had been deployed.

11 Q. Was Mr. St. George a proponent of issuing  
12 the senior notes?

13 A. I assume that he was because they were --  
14 they were issued when he was chief executive of the  
15 company.

16 Q. Well, you were an executive vice president  
17 of Oakwood at the time in 1999; correct?

18 A. Correct.

19 Q. So you must have some idea of who decided  
20 that issuing these bonds would be a good idea and how  
21 they came to that decision?

22 A. Well, I don't have a specific recollection  
23 of any -- of any comment -- conversations with  
24 anyone, but my recollection of our thinking at the  
25 time and our thinking meaning mine, Nick's, Myles',

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1 CSFB.

2 Q. When was the B of A facility put into  
3 place?

4 A. To the best of my recollection along about  
5 1997, 1998, somewhere in there. There were actually  
6 two Bank of America facilities, the first of which  
7 was not a bankruptcy remote true sale structure, and  
8 then a successor to it which was bankruptcy remote  
9 and true sale, but I think the initial inception was  
10 probably sometime in '97 as best I can recall  
11 roughly.

12 Q. Why was the change made from the facility  
13 that was not a bankruptcy remote true sale structure  
14 to a facility that was?

15 MR. CASTANARES: To the extent that that  
16 requires the witness to speculate about somebody  
17 else's motivations, I object to it as -- I  
18 object to its form.

19 MS. WARREN: Well, that's fair enough,  
20 Tony.

21 Q. (By Ms. Warren) Whose idea was it to  
22 change the structure of the Bank of America facility?

23 A. It was Bank of America's.

24 Q. And what is your understanding of why that  
25 change was made?

29

1 A. They told me at the time that they asked  
2 us to make the change that they were making similar  
3 changes to sellers into all of their conduits and  
4 basically moving the technology if you will, changing  
5 the technology from direct lending relationships to  
6 bankruptcy remote and true sale relationships.

7 Q. And was it your understanding based on  
8 what they told you that this was sort of an  
9 industry-wide change?

10 A. Yes.

11 Q. And what was your understanding of the  
12 purpose of that change in structure?

13 A. I would have to speculate. I think I  
14 know, but they never told me what their purpose was.

15 Q. Well, I'm just asking for your  
16 understanding, so give it the best you've got.

17 MR. CASTANARES: I'll object to the form  
18 of the question.

19 THE WITNESS: What people typically desire  
20 to achieve in going to the bankruptcy remote  
21 true sale structure as opposed to a direct  
22 lending arrangement is they seek to avoid  
23 entanglement of their collateral in the event  
24 that the borrower files for bankruptcy. So that  
25 is the typical motive. And so I am speculating.

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1 but I assume that was Bank of America's motive  
2 as well.

3 Q. (By Ms. Warren) How did the Bank of  
4 America facility work in its second iteration?

5 A. Could you tell me what you mean by work?

6 Q. How was it set up to enable you to have  
7 more liquidity?

8 A. Well, I could certainly describe for you  
9 how the transaction worked, whether that's more  
10 liquidity or less liquidity, but if that's what  
11 you're looking for I'd be glad -- I could tell you  
12 that.

13 Q. Sure.

14 A. It was basically a structure. I can't  
15 remember all the entities. It's been a long time  
16 ago, but there was a special purpose entity created  
17 which was Oakwood -- ultimately an Oakwood owned  
18 entity that purchased loans from Oakwood Acceptance  
19 then pledged those loans under some agreement, I  
20 don't remember what it was called or what it looked  
21 like, but pledged those loans to secure indebtedness  
22 that was issued by the special purpose entity. The  
23 special purpose entity issued a note for cash and  
24 then used the cash to purchase the loans from Oakwood  
25 Acceptance.

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1 Q. When the OMI or OMI Note Trust was set up  
2 in February of '01, did it work in substantially the  
3 same way?

4 A. It was more elaborate structurally, but  
5 the fundamentals of the transaction which is you have  
6 a SPE, special purpose entity, removed from Oakwood,  
7 acquires assets in a transaction that lawyers opine  
8 would be found to be a true sale at law and then  
9 pledged those assets to secure indebtedness issued to  
10 a lender for cash with that cash being passed back up  
11 to Oakwood. The fundamentals were the same. Again,  
12 the OMI Note Trust was considerably more elaborate in  
13 terms of structural features.

14 Q. What was more elaborate?

15 A. In the -- compared to the Bank of America  
16 facility?

17 Q. Yes.

18 A. Bank of America facility had a fairly --  
19 what I would characterize as a fairly straightforward  
20 structure in which Oakwood Acceptance sold loans to a  
21 special purpose entity, which then used the loans to  
22 secure indebtedness issued for cash, gave the cash  
23 back to OAC. Fairly straightforward structure. OMI  
24 Note Trust was a little more elaborate in that rather  
25 than Oakwood Acceptance selling loans directly to a

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1 special purpose entity that Oakwood controlled, the  
2 loans were sold to the company we discussed a moment  
3 ago, Ginkgo, in which Oakwood had no financial  
4 interest whatsoever.

5 Ginkgo then sold the loans to Oak Leaf.  
6 Oak Leaf then deposited the loans into OMI Note  
7 Trust. The trust issued the indebtedness, received  
8 the cash and then passed that cash ultimately  
9 upstream back to Oakwood.

10 MS. WARREN: Thank you. Would you read  
11 that back, please?

12 (The record was read by the reporter.)

13 MS. WARREN: Thank you, Denise.

14 Q. (By Ms. Warren) What was your  
15 understanding of the purpose of inserting Ginkgo into  
16 this structure?

17 A. I would have to speculate. That was  
18 something that we didn't suggest but was served up by  
19 CSFB.

20 Q. How long was the OMI Note Trust facility  
21 in place? I think you said it started in  
22 February '01?

23 A. And it terminated in February of '04.  
24 Excuse me. That's technically inaccurate but  
25 substantively accurate. OMI Note Trust 2001-A

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1 terminated in -- I'm searching for the date -- along  
2 about February of 2003. But simultaneously with that  
3 termination there was a successor entity whose  
4 purpose was identical called OMI Note Trust 2003-A  
5 and it ultimately terminated in February of '04.

6 Q. Did Credit Suisse provide OMI Note Trust  
7 2003-A?

8 A. Yes. They were ultimately the lender in  
9 it just as they were in 01-A.

10 Q. So Oakwood used Credit Suisse to provide  
11 the warehousing or loan purchase facility from  
12 approximately February '01 to February '04?

13 A. That's correct.

14 Q. Let's turn to the bank credit facilities  
15 that you mentioned earlier. During the period 1999  
16 to the petition date what sort of bank credit  
17 facilities was Oakwood using?

18 A. There were two significant ones, the first  
19 of which was a syndicated facility that -- of which  
20 First Union was the lead investor and syndication  
21 agent. There were four other banks in the  
22 transaction. As I recall that was when it -- at its  
23 inception, which again was along around '97 time  
24 frame was originally about \$125 million three-year  
25 facility.

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1 It was thereafter enlarged to  
2 \$175 million. And that was the principal bank credit  
3 facility until it was retired along about January of  
4 '02 using the proceeds of a secured credit facility  
5 provided by Foothill.

6 Q. And the Foothill facility is the second  
7 bank credit facility that you were referring to?

8 A. Yes. I may have misspoke. Foothill I  
9 don't think is actually a bank, but --

10 Q. We'll call it a financial institution.

11 A. Fine.

12 Q. Why was the decision made to retire the  
13 syndicated facility in favor of the facility offered  
14 by Foothill?

15 A. It was not our decision. It was the  
16 bank's decision.

17 Q. Which bank?

18 A. The five banks that provided the credit  
19 under the First Union syndicated facility because I  
20 think I testified that First Union-led bank facility  
21 was put in place sometime around 1997 thereabouts,  
22 had a three-year term. It was scheduled to expire in  
23 2000. Because of the financial difficulties at  
24 Oakwood, it was not possible for us to retire that  
25 facility when it was scheduled to retire and we

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1 ultimately worked an accommodation with the bank and  
2 then ultimately retired it in January of '02 with the  
3 Foothill facility.

4 Q. Did the bank syndicate require more in  
5 fees in order to work out an arrangement with you?

6 A. I'm trying to answer that this way and I  
7 don't have a lot of direct recollection, but I can  
8 tell you from the point at which we first had an  
9 event of default. I don't remember when that was,  
10 under the Wachovia facility, the deteriorating  
11 financial condition of Oakwood, the banks were very  
12 attentive to the situation as one would expect.

13 From time to time we paid fees to the bank  
14 group for -- of two kinds. Occasionally we paid the  
15 bank group a fee to accomplish an amendment that was  
16 necessary to cure a default. We may have from time  
17 to time paid the syndication agent a separate work  
18 fee for the work they did to kind of pull that --  
19 that amendment together. So yeah, from time to time  
20 there were -- there were fees.

21 Q. In your understanding is that fairly  
22 typical when a borrower needs a waiver, an amendment,  
23 that the lender will charge a fee for that?

24 A. My experience is varied. I think it  
25 depends on the borrower, depends on the situation.

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1 I've gotten lots of amendments at bank facilities  
2 without paying a fee, but I've paid for some.

3 Q. Well, when the amendments or waivers  
4 involve an event of default, has anyone ever given  
5 you that for free?

6 A. Yes.

7 Q. In what situation?

8 A. I can't recall specific ones, but they  
9 tend to be relatively minor defaults. For example,  
10 you were a week late getting a report that you were  
11 obligated to provide. Relatively small defaults of  
12 little consequence can usually be cured for a small  
13 fee or no fee. Larger defaults more often require a  
14 fee.

15 Q. You referred to the facility as the  
16 Wachovia facility and earlier I thought you had said  
17 First Union was the --

18 A. I've confused you --

19 Q. -- agent?

20 A. -- and myself as well. The transaction  
21 was originally put together by First Union. First  
22 Union was acquired by Wachovia sometime between '97  
23 and -- I can't remember exactly when. And we had to  
24 get used to calling First Union Wachovia, but it's  
25 I'm referring to what's now Wachovia corporation and

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1 its predecessor, First Union.  
2 Q. Why did Oakwood's management decide on  
3 Foothill as the provider of the second bank credit  
4 facility?  
5 A. I don't know.  
6 Q. Who made the decision to use Foothill?  
7 A. I don't know.  
8 Q. No one consulted you about that?  
9 A. I was only very tangentially involved in  
10 the Foothill transaction.  
11 Q. But how could that be if you were the  
12 person who was really in charge of financing for the  
13 company?  
14 MR. CASTANARES: I object to the form of  
15 the question.  
16 THE WITNESS: At that particular time for  
17 whatever reason I was not running the train on  
18 Foothill. I did not negotiate with Foothill. I  
19 did review drafts of Foothill documents. So, I  
20 mean, I knew what the transaction was about, but  
21 I didn't negotiate it. Bob Smith handled that  
22 negotiation with Foothill.  
23 Q. (By Ms. Warren) To the best of your  
24 recollection did Credit Suisse have anything to do  
25 with either the First Union syndicated facility or

1 person hasn't made their mortgage payment, the pot of  
2 money is going to be light if you will because that  
3 payment isn't there. The servicing agreement  
4 requires the servicer to advance that delinquent  
5 payment on behalf of the obligor.

6 That requires the servicer to have the  
7 money to do so, to make the advance on behalf of the  
8 delinquent obligor. The servicer again has to make  
9 that advance in virtually all circumstances. There  
10 are certain exceptions, but having made the advance,  
11 the servicer's right to be repaid the advance from  
12 the assets of the trust is a very senior obligation  
13 of the trust even ahead of the bondholders.

14 So the whole idea with the servicing  
15 advance facility was to provide Oakwood additional  
16 liquidity to enable it to make advances on behalf of  
17 delinquent obligors and finance the cash required to  
18 make those advances from an investor using a true  
19 sale bankruptcy remote special purpose entity type  
20 structure.

21 Q. When did Credit Suisse propose the  
22 servicing advance facility?

23 A. As best I can recall it was probably  
24 sometime in the summer of 2001, roughly that vintage.  
25 I think Fiachra O'Driscoll and I first discussed the

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1 the Foothill facility?  
2 A. They weren't in the lender group for  
3 either of them. I can think of no relationship at  
4 all between Credit Suisse and either of those  
5 facilities.  
6 Q. Let's talk about the servicing advance  
7 facility that you referred to earlier. Was that  
8 something that Oakwood set up using a financial  
9 institution?  
10 A. Well, the idea for the servicing advance  
11 facility came from First Boston and they helped us  
12 set it up, helped us structure it, work with the  
13 rating agencies on it.  
14 Q. And forgive me because I know you  
15 described this briefly before, but what was the  
16 purpose of that facility?  
17 A. It was as follows: In the mortgage  
18 servicing business the servicing contract typically  
19 requires the servicer of a mortgage loan to make a  
20 mortgage payment on behalf of delinquent obligors.  
21 So if an obligor's loan payment is due on  
22 the 1st and is past due on the 15th and on the 20th  
23 of the month when the -- when the proceeds of the  
24 loans in a particular securitization vehicle are  
25 scheduled to be passed through to investors, if that

1 concept of in essence securitizing these advance  
2 receivables in a way not terribly dissimilar to how  
3 once securitizes loans and we said, gee, that would  
4 be neat and it would be a neat transaction that could  
5 be done. We knew an investor who we thought would be  
6 interested and so we proceeded to think about it. It  
7 was relatively new technology at the time that it was  
8 done.

9 Q. And when you say we knew an investor who  
10 might be interested, who's the we?

11 A. It was at least -- at least me and I think  
12 CSFB as well.

13 Q. And who was that investor?

14 A. Prudential Insurance.

15 Q. And how did you come to know or believe  
16 that Prudential would be interested in this  
17 transaction?

18 A. Oakwood had done a series of  
19 securitization transactions with Prudential going  
20 back to 1989. There had been ten of them at least.  
21 We knew them very well. The people at Prudential  
22 knew us very well, knew our operation very well, and  
23 we felt we could create an instrument that would be  
24 attractive to them.

25 Q. And they went for it?

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A. We ultimately closed a transaction that was -- that worked for everyone.

Q. And did you or someone else in Oakwood management direct Credit Suisse to approach Prudential about this facility?

A. I probably did. I don't have an explicit recollection but, I mean, I would imagine I had a conversation with Fiachra and we said gee, this is a good fit for Pru. Why don't you call up Mike, call up Mike Bozzo and draw him a picture of it and see if he wants to talk about it. Probably how it happened.

Q. You also spoke about the ABS market, which was the securitization of the loans; right?

A. Uh-huh, correct.

Q. Would you just describe generally how that worked?

A. Yes. You'd like me to describe the securitization process generally?

Q. Yes.

A. Okay. The process is basically this: Step one is assemble a pool of loans, a pool simply being a number of loans, could be a hundred, more likely 5,000, that you had originated over a period of time. You tested the loans to make sure that they met certain criteria that you felt were important,

sold the securities, you receive the proceeds and that's how you ultimately complete the cycle of way back when, building a home, selling a home, creating a loan. That's how you ultimately realize the value of those loans that you create an advance company.

Q. During the period 1999 to 2000 who set Oakwood's credit standards for the loans that it originated?

A. I don't know that a single individual did. It certainly would be discussed by people in Oakwood Acceptance. Again, I didn't have anything to do really with the origination or an origination side of Oakwood Acceptance. I was strictly on the servicing and securitization side.

So credit would be involved, the CEO of the company would be involved, Bob Smith would be involved because he was operationally in charge of Oakwood Acceptance. Occasionally I might be consulted particularly if something were contemplated that might influence the securitization process.

Q. To your knowledge did Credit Suisse have any role in determining or setting Oakwood's credit standards?

A. They had a role that I would describe as this. At all times we desired to originate loans

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that you thought that the rating agencies would think was important, thought that potential buyers of the securities would think was important. You ultimately arrived at a pool of loans.

You basically take those -- that pool of loans and deposit them into a securitization vehicle. Typically we use trusts. Doesn't have to be trusts. You convey title of the loans to a trust. You appoint a trustee. Trustee now is the record owner of all of those assets and the trustee is entitled to receive all the proceeds of those assets. Then the trust then issues a series of securities.

Typically they look like debt. They have principal balances. They have rates of interest that accrue on them, sometimes fixed, sometimes variable. Sometimes the securities have no principal. They may be interest only securities. You basically create a set of securities that ultimately capture all of the cash that is thrown off by the assets and then you go into the market and sell some or all of the securities that you've created.

Sometimes you do it pure private deal. Sometimes you do it exempt transaction. Sometimes you do it in the public market off a registration statement. And at the end of the day after you've

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that could be packaged and securitized because if we're unable to securitize them, we had no alternative means to obtain the permanent financing to originate those loans. So we were very interested in coming up and originating loans that could be securitized.

So in the event that someone was thinking about making a decision that affected which customers got approved and which didn't or the terms under which loans were originated in terms of downpayment, interest rate, credit score, real property versus personal property, we would often consult with CSPB on that to get their view on how that would affect the market's perception of the collateral.

Q. Did management consult anyone else outside of the company about credit standards?

A. Besides CSPB? Not that I recall. I'd have to think about it, but off the top of my head I can't recall anyone.

Q. Who had the final decision over the credit standards for loan origination? Was that Bob Smith?

A. I'm not sure I always know the answer and here's why. Again, I wasn't directly in the loop. We did not have, for example, a credit committee as some financial institutions do to make those

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1 decisions. I'm sure there were decisions that Bob  
2 made by himself. I know there were other decisions  
3 that were made by the chief executive of the company.

4 Q. In connection with the ABS  
5 securitizations, how did Credit Suisse get  
6 compensated?

7 A. In -- when we marketed each transaction  
8 the underwriters were paid an underwriting fee that  
9 was a percentage of the principal balance of the  
10 securities. The percentage typically was not uniform  
11 across all the securities, but it -- in its simplest  
12 terms they got paid a percentage of the principal  
13 balance of the securities that they sold.

14 Q. Who decided what that percentage would be?

15 A. We negotiated it.

16 Q. Who negotiated it?

17 A. I did.

18 Q. With whom at CS?

19 A. Generally Fiachra O'Driscoll.

20 Q. How physically did the compensation occur?  
21 Did Credit Suisse purchase securities at face value  
22 and then sell them -- or I'm sorry -- purchase them  
23 at a discount and then sell them at face value?

24 A. It worked like this. CSFB marketed the  
25 bonds. CSFB told us where the market was, where the

1 A. Yes. Again, there's an attachment to the  
2 flow of funds memo. The closing memo I think we  
3 typically called it, the front of the prospectus.  
4 It's probably also in the underwriting agreement. I  
5 hadn't thought about that but I bet if we opened the  
6 underwriting agreement, I bet it's in there, too.  
7 There's a unique underwriting agreement for each  
8 transaction.

9 Q. Just to make sure I'm clear, are you  
10 considering the flow of funds memo and the closing  
11 memo to be the same thing?

12 A. Yes.

13 Q. Did Oakwood generally keep its own copies  
14 of the closing memo, the underwriting agreement, the  
15 other transaction documents?

16 A. Yes.

17 Q. Who was the custodian of those documents?

18 A. I think probably I had the bulk of them,  
19 if not all of them.

20 Q. What were your criteria when you were  
21 negotiating with Mr. O'Driscoll about underwriting  
22 fees for how much you thought Credit Suisse should be  
23 compensated?

24 A. The thing I did most often was benchmark  
25 against other issuers. I mean, we were not the only

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1 bonds could be traded. We said okay, these prices  
2 are acceptable on these bonds. That could be their  
3 aggregate principal balance. Generally bonds were  
4 sold at a slight discount.

5 Sometimes bonds were sold at a big  
6 discount depending on the bond, but ultimately a  
7 price was agreed upon that investors would pay. When  
8 CSFB remitted to us the proceeds of the sale, they  
9 deducted their fee from -- that we had agreed upon  
10 from those gross proceeds and remitted to us the net.

11 Q. And where can one find the record of what  
12 you agreed upon for Credit Suisse's fee for any given  
13 securitization?

14 A. Several places. If the securities were  
15 publicly offered, the underwriting fee appears on the  
16 face of the prospectus so you can go look there. If  
17 the -- similarly, there's a closing memo. Sometimes  
18 people call it a flow of funds memo.

19 It's the document that shows how money  
20 moves the day the transaction closes, where the money  
21 comes from, who gets it, where it goes. The  
22 underwriting fee computations are attached as an  
23 exhibit to the closing memo.

24 Q. So either on the face of the securities in  
25 a flow of funds memo or attached to the closing memo?

1 guy, the only company out issuing asset backed  
2 securities with mobile home assets. The number of  
3 people doing it declined over time, but I could see  
4 what -- it's publicly available, what Clayton was  
5 paying CSFB or somebody else, what Greentree was  
6 paying, what Greenpoint was paying, other  
7 securitizers. So you could benchmark. That was the  
8 principal tool.

9 And again, a billion dollar deal probably  
10 has fees that in percentage terms are lower than a  
11 \$500 million deal, but on balance you can benchmark  
12 and find out where the market is, not only what CSFB  
13 was charging but what other banks were charging.

14 Q. And you could find this information from  
15 what appeared in the public documents, for instance,  
16 on the -- on the face of the offering memorandum?

17 A. Yes. If it's a public document, they'd  
18 file the prospectus with the SEC. You could go look  
19 it up.

20 Q. Is that how you got your information to  
21 benchmark?

22 A. Generally, yes. It's publicly available.

23 MR. CASTANARES: Just like to caution the  
24 witness to let the question finish before  
25 beginning to answer, please. Thank you.

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1 Q. (By Ms. Warren) Were you generally  
2 successful in -- in setting a fee that you thought  
3 was appropriate for -- to compensate Credit Suisse  
4 for its underwriting services?

5 A. Yes.

6 Q. How was Credit Suisse compensated for  
7 providing the OMI Note Trust facility?

8 A. There were several elements. I'm doing  
9 this from memory, but I think I have this right.  
10 There was a rate of interest applied to amounts that  
11 OMI Trust borrowed from CSFB. So we paid them  
12 interest on the outstandings as a form of  
13 compensation.

14 There was a fee letter or more than one  
15 fee letter that specified a monthly fee that was to  
16 be paid to CSFB, and it was a fixed fee. And then in  
17 addition when the transaction was first put together  
18 in February of 2001, part of the consideration was  
19 CSFB received a warrant to acquire Oakwood shares.

20 Q. I didn't hear the last part. A warrant to  
21 acquire --

22 A. Shares, common shares of Oakwood.

23 Q. Common shares. Did you negotiate the  
24 compensation arrangement with Credit Suisse for the  
25 OMI Note Trust?

1 at the time --

2 Q. Well, I'm asking for your understanding  
3 based on your conversations with others. I'm not  
4 asking to go into their heads, but that's the basis  
5 of my question.

6 A. I don't have a recollection of  
7 conversations with others. At the time the Bank of  
8 America facility was due to expire. There was  
9 immense pressure from Bank of America to take them  
10 out, to retire that facility. There were tremendous  
11 fees being charged by Bank of America for failing to  
12 take them out.

13 CSFB was the only game in town. It was a  
14 critical facility, had to get done. And on -- in  
15 that -- in the light of those circumstances I  
16 concluded that it was a deal that should get done.

17 Q. Were the fees for the Credit Suisse loan  
18 purchase facility approximately what B of A had been  
19 charging?

20 A. No.

21 Q. Were they higher?

22 A. Yes.

23 Q. Did you apply any pressure on Credit  
24 Suisse to take over the loan purchase facility from  
25 Bank of America when Bank of America informed you

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1 A. I discussed it with Fiachra. We discussed  
2 it a lot internally. We discussed it with the board.

3 Q. Were you the point person for dealing with  
4 Credit Suisse on this issue?

5 A. I was involved. I think -- I think Bob  
6 Smith was also involved.

7 Q. What were Oakwood management's criteria  
8 for determining how much they thought it would be  
9 appropriate to pay Credit Suisse for the OMI Note  
10 Trust facility?

11 A. Well, I can't speak for others. It was an  
12 interesting negotiation in that it was not a  
13 transaction in which there were a half a dozen credit  
14 providers lined up at the door, each of which was  
15 offering to do this transaction. At the time CSFB  
16 was the only game in town.

17 It's difficult to negotiate with someone  
18 when you are trying to get them to bid against  
19 themselves. So we did the best we could and  
20 ultimately agreed on a package that we agreed was in  
21 our best interests to do and that our board agreed  
22 that it was in our best interests to do it.

23 Q. How did Oakwood's management determine  
24 that the package was acceptable?

25 A. Again, I can't speak for anyone else, but

1 that it wanted out?

2 A. I wouldn't characterize it as pressure,  
3 but we certainly -- having a successor facility to  
4 the Bank of America warehousing facility was of  
5 critical importance. While I don't remember any  
6 specific conversations with CSFB, I know there were a  
7 number of them in which, you know, I was hopeful that  
8 CSFB working through Fiachra would be able to serve  
9 up a proposal to provide that liquidity that would  
10 work for them and would work for us.

11 Q. Well, how was the subject raised with  
12 Credit Suisse? Did you raise it?

13 A. Again, I don't have any recollection of  
14 any specific conversations with CSFB during the time  
15 we were contemplating that agreement. My  
16 recollection at the time was I was clearly aware that  
17 we were under pressure from B of A and I would have  
18 discussed that with Fiachra.

19 Q. Did you ever tell Mr. O'Driscoll in words  
20 or substance that Credit Suisse had better help out  
21 on this bank facility or Oakwood would terminate all  
22 or part of the securitization relationship?

23 A. I don't remember ever telling him that. I  
24 do remember but I can't tell you when there were --  
25 there was a conversation with Fiachra somewhere along

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the line and it was probably in the '98 to '01 time frame. Again, I can't tell you when in there, but the gist of the conversation with Fiachra was that the company was receiving a lot of pressure from banks who had extended credit to the company.

The pressure was in so many words banks saying to us we have been supportive of your company. We have extended credit to you. We would like you to give us a fair share of the underwriting business and the fee income that goes with it in your ABS program to recognize the support we've given you in your business through the extension of credit.

And I told Fiachra somewhere along the line, I said it would -- you know, CSFB is getting a boatload of fees here and CSFB is not participating in the credit. And he needed to understand that I was getting a lot of pressure and the company would appreciate CSFB coming up with some credit. I didn't threaten him to take away any business.

Q. But you let him know that there were competitors who wanted in on the ABS business?

A. Yes.

Q. How did the notion of compensating Credit Suisse with a warrant come up?

A. They asked for it.

Q. And did you say in words or substance to Credit Suisse this is the most you're going to get?

A. I don't have any recollection of discussing the size of the warrant with them. I'm certain that we did. I'm certain we'd have told them about the Stock Exchange rule if they didn't already know, but I have no direct recollection of it.

Q. And when you said you weren't going to get shareholder approval for a warrant for a greater amount of shares, why is that?

A. Well, my theory was that if CSFB would go away with 20 percent, the company would be better off. And I was hoping they wouldn't push me to go get shareholder approval for more.

Q. You thought the company was better off if the number stayed -- if the percentage stayed below 20 percent that Credit Suisse could exercise the warrant for?

A. Yes. I thought at the time that the fewer number of shares covered by the warrant, the better from the company's point of view.

Q. And why is that? Why was that better?

A. Dilutive effect. I ought to finish that answer. Warrants by their nature can be dilutive. The greater the number of shares subject to the

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Q. And what was your understanding of why Credit Suisse wanted the warrant?

A. I would have to speculate. Presumably the warrant had the potential to be valuable and that's why they wanted it.

Q. How was the percentage of the warrant -- let me restate that. How was the percentage of common shares that could be acquired under the warrant determined?

A. There is a limitation on the number of shares that could be covered by the warrant. Let me try again. Under either -- I think it's the New York Stock Exchange has a rule. I'm not a lawyer so I don't know, but somebody has a rule and I think it's the Stock Exchange that says a company can't issue a warrant or similar security involving more than 20 percent of its outstanding shares without getting shareholder approval.

Well, we were not going to get shareholder approval on this. So I did the math and I computed the number of shares and I went and looked at the number of outstanding shares of Oakwood and multiplied by 20 percent, rounded down and then deducted one share to remove all doubt, and that's how we came up with it.

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warrant, the greater the potential dilution. And dilution was adverse to the existing shareholders.

Q. I understand. Shall we take a short break?

A. Sure.

THE VIDEOGRAPHER: We're off the record at 10:07.

(A recess was taken.)

THE VIDEOGRAPHER: This is tape number two. We're on the record at 10:16.

Q. (By Ms. Warren) Mr. Muir, in your opinion what caused Oakwood to have to file for chapter 11 relief?

A. The most immediate cause is we exhausted our liquidity. We ran out of cash.

Q. What were the greater causes?

MR. CASTANARES: I object to the form of the question.

THE WITNESS: There were several. Contributors were --

Q. (By Ms. Warren) I'm sorry. Before you go on, your lawyer objected to the form of the question so I'll ask the question differently. In your opinion what were the root causes of Oakwood's filing for chapter 11?

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1 A. There were several. The highlights that  
2 come to mind, and I haven't sat back to think about  
3 this in years, but there were several. Number one is  
4 a very deep and sustained downturn in our industry  
5 that roughly from the peak of the industry in 1998 to  
6 the trough cut the industry by about 60 percent in  
7 terms of its shipments. It's a very deep and  
8 sustained downturn in the industry generally is one  
9 factor.

10 The company expanded more rapidly than it  
11 should have in retrospect. You're expanding a  
12 business perhaps more rapidly than your ability to  
13 run it and to some extent expanding into the  
14 beginnings of a downturn in the industry generally.  
15 And insufficiently stringent underwriting standards  
16 in the finance company.

17 Q. In Oakwood Acceptance Corporation?

18 A. Correct.

19 Q. Is there anything else that comes to mind?

20 A. I'm sure if I thought about it some others  
21 would, but those are key contributors.

22 Q. Did what was known as the loan assumptions  
23 program or the increased use of assumptions  
24 contribute at all to Oakwood's difficulties?

25 A. I think that it did.

1 Q. Did he report to Mr. Smith?

2 A. He did.

3 Q. And what was the substance of the  
4 conversation about the expansion of the loan  
5 assumptions program?

6 A. And I remember the conversation, but I  
7 don't remember the particulars. The gist of it was  
8 was it possible to make enhanced use of the loan  
9 assumption program as an alternative to repossession  
10 in dealing with delinquent obligors.

11 Q. And was Mr. Rutherford asking you that  
12 question or was it -- did he convey this as an issue  
13 that was being discussed with Mr. Smith or something  
14 else?

15 A. He conveyed it -- my recollection is he  
16 conveyed it to me at the time as an idea, a what if,  
17 let's talk about this, is there something that makes  
18 sense.

19 Q. What was the next thing you learned about  
20 the expansion of the loan assumption program?

21 A. Again, I don't remember any specific  
22 events, but a discussion must have ensued at some  
23 point because we did, in fact, undertake to expand  
24 the use of the loan assumption concept as an  
25 alternative to repossession.

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1 Q. Whose idea was the loan assumptions  
2 program?

3 A. Let me answer that this way. There was a  
4 long standing servicing technique at Oakwood and at  
5 other servicers in the manufactured housing finance  
6 business to use a loan assumption as a way to deal  
7 with a troubled credit. It's not uncommon. It's  
8 been used for years and had been used at Oakwood for  
9 years.

10 The first I recall hearing about a  
11 significant expansion in the loan assumption program  
12 was along about -- and I'm -- I'm sorry I can't be  
13 more precise, but probably in the summer of 2000 or  
14 thereabouts. And the first person I remember  
15 speaking about it was a gentleman by the name of Mike  
16 Rutherford.

17 MS. WARREN: Would you read that back,  
18 please?

19 (The record was read by the reporter.)

20 Q. (By Ms. Warren) Who was Mike Rutherford?

21 A. Mike Rutherford was the person in charge  
22 of Oakwood Acceptance on a day-to-day basis.

23 Q. Did he have a particular title?

24 A. He did, and he was at least a vice  
25 president, might have been a senior vice president.

1 Q. How was that decision taken? Who made the  
2 decision?

3 A. I don't know that any one individual did,  
4 but certainly Mike and I discussed it. Bob and I  
5 would have discussed it, Myles and I. We talked to  
6 the people in our retail organization.

7 The reason they were important is they  
8 were part of the process of helping sell repossessed  
9 properties and they had a significant role in the  
10 loan assumption program. So we all discussed it and  
11 discussed the merits and thought that -- that it was  
12 possible to run a program that made sense.

13 Q. Do you remember approximately when  
14 Oakwood, in fact, implemented the expansion of the  
15 loan assumption program?

16 A. I don't remember exactly, but my best  
17 recollection is it's sometime in the summer or  
18 perhaps the fall of 2000. I could be off.

19 Q. Who was in charge, if anyone, of  
20 monitoring the expansion -- the expanded assumptions  
21 program to see if it was doing what it was supposed  
22 to do?

23 A. I don't know.

24 Q. Was there anyone monitoring the loan  
25 assumptions program at Oakwood?

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1 A. I don't know of anyone who was tasked  
2 specifically with monitoring it. There was  
3 information available including some available to me  
4 that enabled me to get an understanding of how many  
5 loans were being put through the program. What  
6 information others had, I don't know.

7 Q. Am I correct that at some point it came to  
8 your attention that the assumptions program was not  
9 having the desired effect?

10 A. I would -- I would characterize it as  
11 having come to my attention that it had some side  
12 effects.

13 Q. Explain that to me.

14 A. The information came to my attention that  
15 caused me to believe that we were doing too many loan  
16 assumptions, that the loan assumption process was  
17 being applied to delinquent loans that were not good  
18 candidates for it, and that as a consequence that  
19 running the program was having some significant  
20 adverse liquidity effects. It was eating up cash.

21 Q. When did that come to your attention?

22 A. As best I can recall would be sometime in  
23 the spring, late winter, early spring, early summer  
24 of 2001, certainly by July of that year.

25 Q. And do you remember when you informed

1 A. No. I'm sorry. Did you say -- was the  
2 question when or if?

3 Q. Yes.

4 A. I know we told them. When we told them, I  
5 don't know.

6 Q. Do you remember any reaction from the  
7 Credit Suisse people about being informed that the  
8 loan assumption program had terminated?

9 A. I don't because, again, I don't have a  
10 specific recollection of calling and telling anyone.

11 Q. We've touched on this a bit in passing,  
12 but what services did Credit Suisse provide for  
13 Oakwood during the period 1999 to the petition date?

14 A. Two or three depending on how you count.  
15 The ones that I remember are they were the ongoing  
16 lead underwriter for the ABS transactions, which was  
17 a -- generally a quarterly type event. They were the  
18 arranger of the servicing advance facility in the  
19 fall of 2001 as I recall, around October.

20 There were a number of occasions when  
21 people from CSFB outside the investment banking side,  
22 for example, perhaps from the investment banking side  
23 or the financial advisory side came and talked to us  
24 about ideas. These were not engagements where there  
25 was an engagement letter and they were getting a fee.

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1 Credit Suisse that the expanded loan assumption  
2 program was having difficulties or side effects?

3 A. I don't.

4 Q. To your knowledge was Credit Suisse  
5 involved in the decision to expand the loan  
6 assumptions program?

7 A. I don't think they -- to my knowledge they  
8 were not involved in the decision. They were  
9 certainly informed of it.

10 Q. Was the loan assumption program eventually  
11 terminated?

12 A. Yes.

13 Q. And around when was that?

14 A. Around July of 2001 I believe is the  
15 correct date.

16 Q. Who made the decision to terminate the  
17 loan assumption program?

18 A. As best I recall, Bob and Myles and I  
19 collectively discussed it. Myles was very much in  
20 favor of terminating it and so was I. So I guess  
21 ultimately Myles, who was CEO of the company, made  
22 the decision.

23 Q. Do you remember when or if Credit Suisse  
24 was informed of the decision to terminate the loan  
25 assumption program?

1 They'd just come down and say hey, we've been  
2 thinking about you. Here's an idea. Why don't you  
3 consider this.

4 Q. Did you consider they were pitching for  
5 more business from you with those ideas?

6 A. Yes. If they were hoping to get an  
7 engagement, yeah. I thought that's what they were  
8 doing, sure. And then ultimately we signed an  
9 engagement letter with them in August of 2002 to  
10 provide financial advisory services.

11 Q. So have I understood you correctly to say  
12 that the services that Credit Suisse provided to  
13 Oakwood during the period 1999 to the petition date  
14 were serving as lead underwriter for the asset backed  
15 securities, being the arranger of the servicing  
16 advance facility and eventually beginning in 2002  
17 serving as financial advisor?

18 A. All of those and I forgot the loan  
19 purchase facility, the warehouse facility. That was  
20 pretty important.

21 Q. And when Credit Suisse came and pitched  
22 for your business by giving you ideas, you didn't  
23 compensate them for that, right?

24 A. No.

25 Q. I mean, they were hoping that they could

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1 get more business from you to the best of your  
2 knowledge; right?

3 A. That was --

4 Q. You weren't paying them to come and just  
5 give you ideas?

6 A. We were not paying them for ideas. I  
7 assume they hoped to land an engagement.

8 Q. In your view did Credit Suisse perform its  
9 services as lead underwriter for the securitizations  
10 competently?

11 A. Yes.

12 Q. Did Credit Suisse perform its services in  
13 providing the loan purchase facility competently?

14 A. Yes. I believe so.

15 Q. Did Credit Suisse perform the financial  
16 advisory services beginning in August of 2002  
17 competently?

18 A. Of that I'm a little less certain.

19 Q. And why do you say that?

20 A. There are a couple of reasons. And by  
21 saying I'm not certain they were competent, I'm not  
22 saying they were incompetent.

23 Q. I understand. Is it fair to say that  
24 you're saying that there were some problems?

25 A. There were what I perceived to be some

1 DIP financing with anybody from CSFB. And, in fact,  
2 we ultimately entered bankruptcy without a DIP.  
3 Another area of focus was CSFB was the lender under  
4 the warehouse facility. And not having been told by  
5 CSFB to the contrary, you know, I expected that when  
6 we entered bankruptcy there wouldn't be any surprises  
7 in terms of continued access to that source of  
8 financing.

9 And, in fact, there were some significant  
10 surprises. And third, there was a -- I had a  
11 frustration if you will in that the item that did  
12 have tremendous focus, that is, obtaining an  
13 indication of support from Berkshire while it was  
14 critically important, they seemed to have a  
15 perception that we had an infinite amount of time to  
16 achieve that objective.

17 Q. They meaning Credit Suisse?

18 A. Correct.

19 Q. Uh-huh.

20 A. When, in fact, we informed them repeatedly  
21 that the amount of time fixed or available to  
22 accomplish that was fixed. I was frustrated that  
23 they never seemed to understand that there was going  
24 to come a point in time where we were going to be  
25 compelled to file whether we had Berkshire on board

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1 problems.

2 Q. And what were those?

3 A. My recollection is that the financial  
4 advisory people did an immense focus and attention on  
5 one of a number of elements that were part of that  
6 engagement. The one that they had tremendous focus  
7 on was working with us and the company that turned  
8 out to be the major creditor of the bankruptcy case  
9 to obtain at least an indication of support from that  
10 creditor as we entered the bankruptcy process.

11 Q. That creditor was Berkshire Hathaway?

12 A. Correct.

13 Q. And did you think that that focus was  
14 appropriate? Did you think it was important to get  
15 an indication of support from Berkshire Hathaway for  
16 whatever plan of reorganization the company was going  
17 to come up with?

18 A. I did.

19 Q. So what was the problem?

20 A. The things that perhaps didn't go so well  
21 where there were some other elements that I felt  
22 should have been part of the engagement. Number one  
23 was working with us to help arrange DIP financing,  
24 which again, I didn't have visibility to everything  
25 that CSFB was doing, but I seldom if ever discussed

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1 or not. They may have understood that, but they gave  
2 me indications that they did not and I did find that  
3 frustrating.

4 Q. Who was the point person if there was one  
5 at Oakwood dealing with Credit Suisse in their  
6 capacity as financial advisor?

7 A. I think there were three of us that talked  
8 to CSFB, perhaps not always about -- together or  
9 always about the same matters, but the principal  
10 players were Myles Standish, the chief executive, Bob  
11 Smith, who was the -- at the time the executive vice  
12 president of financial operations, and me.

13 Q. Who was the point person from Credit  
14 Suisse on the financial advisory engagement?

15 A. Jared Pelt.

16 Q. Who at Oakwood was responsible for getting  
17 DIP financing?

18 A. I don't know that we ever sat down and  
19 delegated tasks. I was not focusing on that piece.  
20 Bob Smith spent a lot of time focusing on it. I  
21 think perhaps Myles may have been involved as well,  
22 but Bob pretty much had the ball on the DIP.

23 Q. From the period 1999 to -- well, strike  
24 that. Going back in time, how did the relationship  
25 between Oakwood and Credit Suisse begin? Do you

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1 remember?  
2 A. Yes.  
3 Q. How?  
4 A. We called them up in New York and asked to  
5 come visit with them.  
6 Q. Who did you call?  
7 A. It was one of two people. It was either  
8 Fred Terrell or Pilar Esperon.  
9 Q. Who were they?  
10 A. They were asset backed investment bankers  
11 at CSFB.  
12 Q. How did it come about that you decided to  
13 call them and ask them to come see you?  
14 A. We called them and asked to come visit  
15 them --  
16 Q. Sorry. I heard that wrong.  
17 A. -- to understand their capabilities in  
18 underwriting manufactured housing asset backed  
19 securities. That was motivated by the fact that we  
20 had been fired by Merrill Lynch.  
21 Q. How did Credit Suisse come to your  
22 attention as another provider of this kind of  
23 service?  
24 A. At the time there were three banks that  
25 were the major players in manufactured housing asset

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1 backed to the virtual exclusion of all the other  
2 investment banks. And they were -- gee, I'm doing  
3 this from memory -- CSFB, Merrill and Lehman  
4 Brothers.  
5 We didn't know anybody or really had had a  
6 lot of exposure to anybody at Lehman, but we had  
7 heard good things about CSFB. And having been fired  
8 by Merrill they seemed, you know, a logical candidate  
9 to go at least have a visit with and discuss a  
10 relationship.  
11 Q. And did the relationship -- did that visit  
12 happen?  
13 A. It did.  
14 Q. And did the securitization relationship  
15 begin soon after?  
16 A. It did.  
17 Q. When did Fiachra O'Driscoll enter the  
18 picture?  
19 A. About 1996 to the best of my recollection.  
20 Q. And do you remember how that happened?  
21 A. Yes. Pilar Esperon and Fred Terrell with  
22 whom we had been working from the inception of the  
23 relationship in 1994 decided to leave CSFB as I  
24 recall in 1996. And I had a discussion with Pilar,  
25 who -- on the phone one day and she said I have

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1 picked an outstanding successor for me. I want to  
2 bring him down and introduce him to you because  
3 you're going to really like him.  
4 Q. And that was Fiachra?  
5 A. That was Fiachra.  
6 Q. I take it you did like him?  
7 A. I liked him a lot.  
8 Q. Why?  
9 A. A lot of reasons. Fiachra is extremely  
10 bright. He works very, very hard. He delivers  
11 results. He doesn't surprise you. He's  
12 unquestionably honest and I trusted him. I mean, I  
13 could think of other -- he's just an absolutely first  
14 rate person.  
15 Q. And do you believe that as firmly now as  
16 you did at the beginning of the relationship?  
17 A. Absolutely.  
18 Q. Could I ask you to take a look back at  
19 Exhibit 212? Looking at the first page of the list  
20 of officers, tell me why did Nicholas St. George  
21 leave the company?  
22 A. He retired.  
23 Q. And Bill Edwards took over as chairman  
24 from Mr. St. George, correct, and chief executive  
25 officer?

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1 A. I think that's correct, yes.  
2 Q. Okay. Why did Mr. Edwards leave the  
3 company?  
4 A. The board asked him to.  
5 Q. Why?  
6 A. I wasn't consulted, but I thought Bill was  
7 the wrong man for the job and the board did the right  
8 thing.  
9 Q. Is it your understanding that the board  
10 terminated Mr. Edwards for general underperformance  
11 or was there any specific incident that caused this?  
12 A. Again, I wasn't privy to the conversation.  
13 I didn't attend the meeting. I knew the meeting was  
14 going to take place before it took place. I know  
15 what the subject matter was and I knew from  
16 discussions with others in the company at least some  
17 of the reasons that other members of management had  
18 cited to the board as a reason for getting rid of  
19 Bill.  
20 Q. And what were the reasons?  
21 A. There's one in particular that sticks in  
22 my mind, and it was a -- interestingly, a credit  
23 underwriting related issue. There was a program  
24 called DPAP that Mr. Edwards insisted on running  
25 against the advice of others in the company.

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1 Q. What's DPAP?

2 A. It stood for downpayment assistance

3 program.

4 Q. Why did he want to run that program?

5 A. It requires me to speculate, but I'm

6 fairly confident that Bill wanted to run it because

7 he thought it would have a positive effect on sales

8 of mobile homes.

9 Q. What was it?

10 A. It was a program which involved a third

11 party vendor that enabled a prospective customer who

12 wanted to buy a mobile home to give to the vendor two

13 or three, three as I recall, postdated checks each in

14 the amount of approximately a third of the required

15 downpayment for the mobile home.

16 Then the third party vendor in turn then

17 wrote Oakwood a check for the full amount of the

18 downpayment. It was in essence a downpayment

19 financing program.

20 Q. So why was Mr. Edwards terminated over

21 this?

22 A. Well, again, I don't know that that was

23 the deciding factor, but it was an extremely poorly

24 designed play. It was foolish. It was bad

25 underwriting. And the board may have -- once they

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1 found out about it may have concluded that that was

2 indicative of the wrong person in the CEO chair.

3 Again, I wasn't there.

4 Q. How long was the DPAP running?

5 A. A matter of months.

6 Q. Was this part of the insufficiently

7 stringent underwriting standards that you referred to

8 earlier?

9 A. Yes.

10 Q. Was this part of the cause of Oakwood's

11 difficulties?

12 A. If by difficulties you mean the

13 bankruptcy, I would say no. It was a foolish

14 program. It was not something that had the ability

15 or so widespread as to bring down the company.

16 Q. So just so I'm clear, had Mr. Edwards been

17 running the DPAP without the board's knowledge or

18 consent?

19 A. I believe the answer is yes.

20 Q. Who was Duane Daggett?

21 A. Duane was Bill's successor as chief

22 executive.

23 Q. And how was he selected for that position?

24 MR. CASTANARES: Object to the form of the

25 question.

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1 THE WITNESS: That decision was made by

2 the board. I don't know how they arrived at it.

3 Q. (By Ms. Warren) Was he a professor?

4 A. He was.

5 Q. He hadn't had any management experience

6 before?

7 A. My understanding is Duane was a professor

8 of business at Appalachian State University. Prior

9 to that I believe he had been up there maybe seven,

10 eight, nine years before he -- and had retired from

11 that in approximately 2000, at which time he began to

12 do some consulting work for Oakwood. But to answer

13 your question, prior to his professorship at

14 Appalachian Duane had had a number of management

15 positions in a number of companies.

16 Q. I was just curious. It seemed like an

17 unusual choice. Why did Mr. Daggett step down as

18 chief executive officer?

19 A. Again, I wasn't involved directly, but in

20 about September of '01 Duane stepped down as chief

21 executive. I think he remained on the board for a

22 period of time and Myles was elected chief executive

23 of the company.

24 Q. How did Mr. Daggett perform in your

25 opinion as CEO?

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1 A. Duane did some good things and -- and

2 accomplished some things, was a very thoughtful guy,

3 tried hard to do the right thing, but he was not the

4 guy that the company needed at the time.

5 Q. What kind of guy did the company need at

6 the time?

7 A. We needed a disciplined turnaround guy at

8 the time, and that was not what Duane was.

9 Q. And what was your view of Mr. Edwards'

10 performance as chief executive officer?

11 A. Bill's heart was in the right place, but

12 Bill was in way over his head.

13 Q. In what sense?

14 A. I don't think Bill appreciated the risks

15 associated with a number of his decisions.

16 Q. What decisions besides the DPAP?

17 A. Well, we could go back and look at the

18 financial statements, but in -- Bill came up from a

19 manufacturing background, running manufacturing

20 plants. Manufacturing plants are at their most

21 efficient when they are running as fast as they can

22 go.

23 Therefore, your unit cost goes down, which

24 is good if you're a manufacturer. We did build way

25 more inventory than we needed during the period of

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1 time when Bill was CEO and when he was president of  
2 the company prior to being CEO. In the face of  
3 falling sales we continued to build and we had --  
4 wound up with vastly excessive inventories under  
5 Bill's direction.

6 Q. And in your opinion how did Mr. Standish  
7 perform as chief executive officer?

8 A. I think he did a great job in a tough  
9 situation. Ultimately he didn't succeed. I didn't  
10 succeed. We all didn't succeed, but I thought Myles  
11 did a fine job, a really very excellent job.

12 MS. WARREN: Let's take a short break.

13 MR. CASTANARES: Sure.

14 THE VIDEOGRAPHER: We're off the record at  
15 10:56.

16 (A recess was taken and Exhibit Numbers  
17 213 through 218 were marked for identification.)

18 THE VIDEOGRAPHER: We're on the record at  
19 11:38.

20 MR. CASTANARES: Would you give Mr. Muir  
21 an opportunity to make his correction, please?

22 Q. (By Ms. Warren) I understand from Mr.  
23 Muir's counsel that he wishes to make a correction to  
24 prior testimony. Is that right, sir?

25 A. That's correct. I believe you asked me a

1 flow worked in terms of the different securitization  
2 transactions. So first I'm showing you Defendant's  
3 Exhibit 213, which is entitled a sale and servicing  
4 agreement dated as of February 9th, 2001. It's Bates  
5 numbered CSFB-92153 to 92238. Would you take a quick  
6 look at that and just tell me if you recognize it?

7 A. I do.

8 Q. And what is it?

9 A. This is one of a series of documents which  
10 collectively document the loan purchase facility,  
11 what we sometimes referred to as the warehouse  
12 facility. This is one of the key documents in that  
13 documentation trail.

14 Q. Okay. What does this document do?

15 A. Take a look and -- they varied from deal  
16 to deal, but --

17 MR. CASTANARES: Just a sec. I wish to  
18 object to the form of the question, but go  
19 ahead. Counsel, you're obviously asking him to  
20 look at a document of some 80 pages, 85 pages in  
21 length. Could you perhaps be a bit more  
22 specific in what you'd like him to answer?

23 Q. (By Ms. Warren) Sure. All I'm asking is  
24 that you tell me generally what the purpose of this  
25 document was?

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1 question to the effect of when did I become aware  
2 that perhaps the LAP program was being used  
3 excessively and when did we terminate the program.  
4 And I think I testified that that was -- both of  
5 those events were like spring or summer of 2001. It  
6 was, in fact, 2002.

7 Q. So you became aware that the loan  
8 assumption program was terminated sometime in the  
9 summer of 2002?

10 A. Right. We terminated the program in the  
11 summer of 2002, which was shortly after coming to a  
12 conclusion that it had been used excessively.

13 Q. And when did you have the conversation  
14 with Mr. Rutherford in which you learned that the  
15 expansion of the loan assumption program was being  
16 contemplated?

17 A. Well, I don't think I ever heard that from  
18 -- well, let me answer that this way. The  
19 conversation I recall with Mr. Rutherford in which we  
20 first discussed the idea of expanding the loan  
21 assumption program, I'm pretty certain that was in  
22 the summer of 2000.

23 Q. Okay. Thank you. Mr. Muir, I'm going to  
24 show you some documents that I want to go over with  
25 you just to help us understand better how the funds

1 A. I'm pretty sure if I reviewed it to tell,  
2 I could tell you for certain, but I think this is the  
3 basic document that describes how loans are conveyed  
4 from Oak Leaf Holdings or deposited by Oak Leaf  
5 Holdings into the OMI Note Trust and how the senior  
6 notes that are issued by the trust are created, what  
7 they're -- some of their terms are, how they get  
8 paid.

9 There are some other documents that  
10 collectively accomplish some of the other objectives  
11 of the transaction, but this is one of the key ones  
12 that I think covers the depositing of the assets and  
13 the creation of the debt as I remember.

14 Q. Take a look at the page that's Bates  
15 numbered at the bottom CSFB-92190.

16 A. 92190.

17 Q. And that should say article three at the  
18 top.

19 A. It does.

20 Q. Taking a look in section 3.1, what is your  
21 understanding -- and I'm just asking for your  
22 understanding as a business person -- of what the  
23 note account was that's referred to in that section?

24 A. Again, if I read the rest of the document  
25 I could figure it out, but I'm speculating because

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1 it's been a while; but I think the note account is a  
2 bank account maintained at Chase by the trustee of  
3 the trust into which was deposited the proceeds of  
4 the assets of the trust, collections on the loans,  
5 for example.

6 Q. And section 3.2 below it entitled flow of  
7 funds sets out priorities to which those funds were  
8 to be devoted. Is that generally correct?

9 A. Yeah. I think so.

10 Q. And looking at those priorities from the  
11 first one on page 37 of the document to the last one,  
12 the 11th on page 38 of the document, do these  
13 generally accord with your recollection of the  
14 priorities for the flow of funds in the note account?

15 A. Yes.

16 Q. And do you ever recollect the flow of  
17 funds from the note account being different from  
18 what's set forth in section 3.2?

19 A. I have no reason to think that they were  
20 ever different.

21 Q. Where in this section 3.2 is there a  
22 description of any residual interest that Oakwood may  
23 have had in these funds in the note account?

24 MR. CASTANARES: Object to the form of the  
25 question.

1 of the proceeds of those assets and disbursed  
2 all of those assets in accordance with this  
3 agreement, perhaps with other agreements; but at  
4 the end of the day to the extent once everybody  
5 ahead of Oakwood in the payment priority was  
6 paid, any cash that was left over ultimately  
7 made its way back to Oakwood.

8 Q. (By Ms. Warren) And is it your  
9 recollection that that, in fact, would happen over  
10 the course of the existence of this OMI Note Trust?

11 A. It did happen.

12 Q. And do you remember approximately how much  
13 in funds would come back to Oakwood eventually?

14 A. A lot of money, but I couldn't give you a  
15 dollar amount. It is derivable if we were to take  
16 the records and look, but it's a substantial amount  
17 of money.

18 Q. Take a look at section 3.8, please, which  
19 is entitled sale of receivables. And that's at page  
20 CSPB-92194 of Exhibit 212 -- I'm sorry -- 213. Does  
21 this provision concern the sale of mortgages into the  
22 REMIC trust?

23 MR. CASTANARES: Objection to form.

24 THE WITNESS: It certainly could.

25 Q. (By Ms. Warren) What's your --

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1 THE WITNESS: Could you repeat the  
2 question, please?

3 MS. WARREN: Sure. Why don't you read it  
4 back.

5 (The record was read by the reporter.)

6 THE WITNESS: I'm trying to find a  
7 definition. I'm not sure without reviewing the  
8 documents taken as a whole, but I suspect  
9 Romanette ten will accomplish that goal.

10 Q. (By Ms. Warren) And that's the section  
11 that refers to the certificate distribution account?

12 A. Yes. I was trying to find the definition  
13 of certificates to refresh my recollection of what  
14 that means.

15 Q. When you testified earlier that it's your  
16 belief that Oakwood had a beneficial interest in  
17 funds in the note account, was this what you were  
18 referring to?

19 MR. CASTANARES: Object to the form of the  
20 question.

21 THE WITNESS: This provision may be part  
22 of it, but if you look at the agreements taken  
23 as a whole and we were to dissect them, I think  
24 what we would find is that the trustee was the  
25 owner of the assets in the trust, collected all

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1 A. And often did.

2 Q. Is it your understanding that this  
3 provision allows the OMI Note Trust to use proceeds  
4 to pay note holders?

5 A. Proceeds of sale of assets?

6 Q. Yes.

7 A. Yes.

8 Q. Do you know of any claim that Oakwood  
9 could assert over funds that were to be paid to note  
10 holders pursuant to this agreement, Exhibit 213?

11 A. I'm not sure I understand the question.  
12 I'm sorry.

13 Q. Do you know of any reason why Oakwood  
14 would have any right to proceeds that were paid to  
15 note holders out of the OMI Note Trust account  
16 pursuant to this agreement, Exhibit 213?

17 A. Let me say it another way to make sure I  
18 understand the question. If you're asking me if the  
19 class A note holders received money pursuant to this  
20 agreement and there wasn't some error made, does  
21 Oakwood have any claim to that money. I think the  
22 answer -- so far as I know the answer is no, but I'm  
23 not a lawyer.

24 Q. Understood. I'm just asking for your  
25 understanding as the business person who dealt with

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1 these agreements and operated some of the facilities.  
 2 Take a look back at section 3.2 of Exhibit 213 and in  
 3 particular Bates page 92191, and you'll see the ninth  
 4 priority payment in this waterfall is to the servicer  
 5 if OAC the servicing fee. That's Romanette nine. Do  
 6 you see that?  
 7 A. I do.  
 8 Q. What is your understanding of why the  
 9 servicing fee was ninth in priority?  
 10 MR. CASTANARES: I'll object to the form  
 11 of the question.  
 12 THE WITNESS: Well, it's the -- it's in  
 13 the priority it is because that's where we  
 14 negotiated it. I'd have to speculate as to  
 15 CSFB's motives in why they negotiated it for it  
 16 to be where it is.  
 17 Q. (By Ms. Warren) Would you have preferred  
 18 it to be higher up in the waterfall?  
 19 A. Well, to the extent that I was  
 20 representing OAC and I have a right to money, I'd  
 21 always rather have my priority higher than others.  
 22 yes.  
 23 Q. Sure. I'm showing you now, Mr. Muir,  
 24 Defendant's Exhibit 214, which is on letterhead of  
 25 Hutton & Williams and it's Bates numbered CSFB-225678

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1 to 225702 dated February 26th, 2001. Take a look at  
 2 that and let me know if you've seen it before.  
 3 A. I don't specifically recall this, but I  
 4 think it's highly likely that I have seen it before.  
 5 Q. Do you remember what Hutton & Williams'  
 6 role was?  
 7 A. In what? I'm sorry.  
 8 Q. In setting up the OMI Note Trust?  
 9 A. They were counsel to Oakwood.  
 10 Q. Do you remember whether Hutton & Williams  
 11 produced this document, Defendant's Exhibit 214, at  
 12 Oakwood's direction?  
 13 A. I'm certain that they did.  
 14 Q. Would you review legal opinions like this  
 15 in the course of your duties at Oakwood?  
 16 A. Occasionally.  
 17 Q. But you don't really have a memory of this  
 18 one?  
 19 A. I do not.  
 20 Q. I'm showing you a document that's been  
 21 marked Defendant's Exhibit 215. It appears the  
 22 first page appears to be an account statement issued  
 23 by J.P. Morgan and this is Bates numbered  
 24 OHCLT-428297 through 428397. Take a look at that and  
 25 let me know if you recognize it?

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1 A. I don't -- excuse me. I don't recognize  
 2 this particular document, but I think I know what it  
 3 is.  
 4 Q. What is it?  
 5 A. I think it's the bank statement if you  
 6 will for the note account for the OMI Trust that was  
 7 -- or we discussed briefly in that section of the  
 8 sale and servicing agreement we looked at a minute  
 9 ago.  
 10 Q. In the course of your duties at Oakwood  
 11 would you have occasion to review statements from the  
 12 OMI note account?  
 13 A. Not on a regular basis, no.  
 14 Q. Was Oakwood Homes able to make any  
 15 withdrawals from this account?  
 16 A. Only to the extent that Oakwood controlled  
 17 one of the entities that was a party to that sale and  
 18 servicing agreement. And by causing one of those  
 19 parties that was an Oakwood entity to act, we might  
 20 have been able to cause a withdrawal because we were  
 21 entitled to under the agreement. But if you're  
 22 asking me could I call up the trustee and say just  
 23 please wire me a million dollars, the answer is no.  
 24 Q. And why not?  
 25 A. Because I believe the sale and servicing

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1 agreement which binds the trustee instructs the  
 2 trustee when and how distributions from this account  
 3 are to be made.  
 4 Q. And the trustee was not permitted to  
 5 deviate from those instructions?  
 6 A. Certainly wasn't expected to.  
 7 Q. Which entity that Oakwood Homes controlled  
 8 had any ability to make withdrawals from the note  
 9 account?  
 10 A. Again, as I testified a minute ago, I  
 11 don't think except by operation of these agreements  
 12 we had any ability to make withdrawals.  
 13 Q. So is it fair to say that Oakwood Homes  
 14 could not use the funds in this account for general  
 15 corporate purposes?  
 16 A. It absolutely could not do so.  
 17 Q. And is it fair to say that if any money  
 18 came out of this account and ended up at Oakwood  
 19 Homes, that would have to be a decision of the  
 20 trustee?  
 21 MR. CASTANARES: Object to the form of the  
 22 question.  
 23 THE WITNESS: I don't think that's fair.  
 24 In my experience trustees don't decide much of  
 25 anything. Trustees like to be directed. And so

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1 in making disbursements out of accounts like  
2 this in my experience trustees look to the  
3 underlying documents in the transaction,  
4 determine who is authorized to direct them and  
5 then take the direction they are given. Not  
6 trying to put -- play games with you, but  
7 trustees generally in my experience don't decide  
8 things.

9 Q. (By Ms. Warren) Please take a look at the  
10 page that's Bates numbered 428300 in this exhibit.  
11 Do you see the line entry for approximately 170,000  
12 at the top?

13 A. I do.

14 Q. And there's a reference in the same row of  
15 the table on this page to note account transfer. Do  
16 you see that?

17 A. That's the third line?

18 Q. Yes.

19 A. Yes. Where it says ORN and then some  
20 numbers, note account transfer?

21 Q. Yes.

22 A. I see that.

23 Q. What's your understanding of what this  
24 entry refers to?

25 MR. CASTANARES: Object to the form of the

1 conveyed to the trustee and to the note holders on a  
2 monthly basis I believe one of the elements of that  
3 document is a reconciliation of the balances that are  
4 in this note account starting with the balance at the  
5 beginning of the month, showing the collections,  
6 showing the disbursements and arriving at the ending  
7 balance.

8 I believe that reconciliation is in the  
9 monthly remittance reports and that would summarize  
10 all of this activity that is in this bank statement  
11 in a little less granular fashion. So I think if we  
12 had those, we could go through and match it up.

13 Q. The monthly remittance reports were  
14 generated by OAC?

15 A. They were.

16 Q. And they were sent to the trustee and to  
17 the note holders?

18 A. And possibly to others.

19 Q. During the period 1999 to the petition  
20 date, who reported to you?

21 A. Gee, different people at different times.  
22 In terms of everything we've talked about here today,  
23 the people that first come to mind are people that  
24 worked in loan servicing and prepared these  
25 remittance reports we spoke of and people who had to

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1 question.

2 THE WITNESS: I don't know what it refers  
3 to.

4 Q. (By Ms. Warren) Do you know generally  
5 what the term note account transfer refers to?

6 A. I don't.

7 Q. Who at Oakwood would know that?

8 A. Looking solely at this piece of paper, I'm  
9 not sure anyone would know. There are -- exist or  
10 did exist, probably still exist records that would  
11 tell us what these numbers are, but -- and we could  
12 figure it out, but I don't have them.

13 And I don't know that there's anybody that  
14 I can think of that will have a recollection about  
15 what that specific line item is, although again, I  
16 think it's derivable from the record or the documents  
17 that should exist.

18 Q. What kind of records are there that would  
19 explain what this entry means?

20 A. My recollection is one of the duties of  
21 the servicer under the OMI trust agreement was to  
22 keep track of the collections on the loans. We had  
23 computer systems that enabled Oakwood to do that.  
24 That was Oakwood's job. I believe that in the  
25 monthly remittance report for OMI Trust that was

1 do with selecting loans to go in pools of loans to be  
2 securitized, but the person in charge of that group  
3 reported to me. His name was Clark Beeson and he had  
4 people that worked for him that did some of those  
5 tasks.

6 Q. Were there different departments or groups  
7 that reported to you by specific names? For  
8 instance, was there a securitizations department, a  
9 loan servicing department, et cetera?

10 A. Well, there was -- there was broadly one  
11 big department or one significant department that had  
12 to do with the things we've discussed today, and  
13 that's a group that included investor accounting or  
14 investor reporting.

15 And a second part of that group consisted  
16 of -- I don't know that we had a title for it, but  
17 securitization support, people that did leg work when  
18 it was time to put an ABS deal together, people who  
19 worked with folks on the other side at CSFB, people  
20 who did work for me. And that was really basically  
21 one big group during the time frame you asked about.  
22 And Clark Beeson was the leader of that group,  
23 principally what I would call ministerial-type  
24 functions.

25 Q. Were there any other groups that reported

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1 to you?

2 A. '99 to -- not during that time frame, I

3 don't think.

4 Q. Were there a series of vice presidents who

5 reported to you? What were the titles of the people

6 who directly reported to you?

7 A. I think Clark's -- he was -- he was

8 probably in that time frame my only direct report and

9 I think his title was like director of securitization

10 or something.

11 Q. Uh-huh. And then who was the next level

12 down from Mr. Beeson?

13 A. It varied at times. There were -- Clark

14 did most of the securitization support work himself.

15 On the investor reporting side in this time frame

16 there were probably two managers of investor

17 reporting. One of them was Dawn Lippard. The other

18 one who preceded Dawn, his name I can't recall. And

19 there were generally four investor reporting

20 accountants that reported either to Dawn or to her

21 predecessor.

22 Q. Take a look down this same page,

23 OHCLT-428300 of this exhibit, and you'll see there's

24 an entry for approximately \$416,000. Do you see

25 that?

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1 A. Yes.

2 Q. The third one down? And the reference in

3 the same row on the left-hand side is to CSFB Alpine

4 program fees?

5 A. Yes.

6 Q. Do you understand what this entry refers

7 to?

8 A. I do.

9 Q. What's that?

10 A. This is the trustee paying to Alpine,

11 CSFB, the monthly fee that was provided for in the

12 fee letter for the OMI Trust transaction.

13 Q. And is it correct that the program fees

14 for this facility were always paid by the trust from

15 the OMI note account?

16 A. I believe that's correct.

17 Q. Take a look at page 428309 of this --

18 actually, it looks like there is no such thing.

19 A. 428309?

20 Q. I'm directing you to a --

21 A. I have it.

22 MS. WARREN: Do you have it?

23 MR. CASTANARES: Yeah. My copy ends at

24 07.

25 THE WITNESS: I have two copies of it.

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1 Q. (By Ms. Warren) All right. I guess we

2 have a copying error, but fortunately --

3 A. Would you like one of mine?

4 Q. -- you have the right one. Can I borrow

5 it back from you a moment? No, you don't have to --

6 A. Sure.

7 Q. -- rip it up. Let's see.

8 MR. CASTANARES: And counsel, I'm just

9 fine if you'll furnish us with a full copy of

10 this document by mail or whatever when you get

11 back to New York.

12 MS. WARREN: Yes. We're happy to do that.

13 MR. CASTANARES: Thank you. We probably

14 have it someplace, too, but let's just have the

15 official one from the depo if we could, please.

16 MS. WARREN: Sure.

17 MR. CASTANARES: I'll just look over the

18 witness's shoulder if you want to question him

19 about the pages I don't have.

20 Q. (By Ms. Warren) I'll show you both this

21 page together. The question is very simple, which is

22 do you recognize this page and can you tell us what

23 it is?

24 A. I am not certain, but I think -- I don't

25 know what this is. I don't know if this is a Chase

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1 document or an Oakwood Homes document. I just don't

2 know.

3 Q. All right. Fair enough. I'm showing you

4 a document that's been marked Defendant's

5 Exhibit 216. It's Bates numbered OHCLT -- well, let

6 me take that back. The first page just bears the

7 Bates number 007100014 and the document ends at page

8 OHCLT-428078.

9 This appears to be a number of different

10 documents put together and we tried to put this

11 together in the order that seemed right because the

12 way we received them is they were produced -- there

13 was no -- there were no attachments. It was just all

14 pages, but perhaps you can take a look and tell us if

15 you recognize any of the pages in this document and

16 then we'll go from there into whether they belong

17 together.

18 A. Sure. I recognize the first page.

19 Q. What's that?

20 A. That is the front cover of a prospectus

21 for the 2002-B ABS offering.

22 Q. And can you flip through and tell us what

23 the ensuing pages are?

24 A. I recognize the second page. That is the

25 one ending in 057.

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1 Q. What's that?

2 A. This is the computation of the amount of

3 money to be paid by CSPB to Oakwood Mortgage on the

4 closing date of this transaction.

5 Q. And which transaction are you referring

6 to?

7 A. 2002-B.

8 Q. That's a securitization?

9 A. Correct.

10 Q. Let's skip over the next two pages for the

11 time being, which are an E mail, and look at page

12 428052.

13 A. I have it.

14 Q. Do you recognize this page?

15 A. Well, I don't have a recollection of this

16 particular page, but I can tell you what this

17 document is.

18 Q. What is it?

19 A. It's the closing memo for the 2002-B

20 transaction.

21 Q. And I believe you testified earlier that

22 the fees were attached to the -- to the closing

23 memorandum?

24 A. Generally or I always attach the

25 calculations to my copy of the closing memorandum.

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1 yes.

2 Q. I see. Where does the closing memorandum

3 end in this collection of documents?

4 A. I believe I'm correct in saying that pages

5 052 through -- some may be missing, so I'm going to

6 read you the numbers: 052, 053, 054, 055, 056 are

7 all part of the closing memo. My copy has no 058 --

8 or excuse me -- has no 057.

9 MR. CASTANARES: Nor does mine.

10 THE WITNESS: 058 appears to be -- is

11 labeled appendix. I think in all probability

12 that was an attachment to the closing memo.

13 MS. WARREN: Okay. Thank you.

14 THE WITNESS: 057?

15 MS. WARREN: I don't have that in my copy.

16 MR. CASTANARES: Nor do I.

17 MR. WILLIAMSON: It's the second page of

18 the --

19 THE WITNESS: It's the second page. It's

20 out of order.

21 MS. WARREN: I see. It's out of order.

22 THE WITNESS: Okay. Now we've found 057.

23 MS. WARREN: Mystery solved.

24 THE WITNESS: This is the calculation of

25 the money due to Oakwood from CSPB. This is the

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1 document I would have attached to my copy of the

2 closing memo. If we reorder them, it will make

3 more sense.

4 Q. (By Ms. Warren) Okay. Thank you. And

5 then looking at the remainder of the document on page

6 059, we have an account statement from the note

7 account; correct?

8 A. That's what it appears to be.

9 Q. And that appears to end at page 064?

10 MR. CASTANARES: Counsel, I don't mean to

11 interrupt, but I may be incorrect but these

12 appear to relate to two entirely different

13 transactions. Is this all one document? For

14 example, page 059 appears to be the OMI Note

15 Trust 2001-A note account --

16 MS. WARREN: Yes.

17 THE WITNESS: -- whereas the prior part of

18 the document appeared to relate to a

19 securitization.

20 MS. WARREN: Yes. You're entirely

21 correct, but the way that these were produced to

22 us made it hard to figure out what went with

23 what, so --

24 MR. CASTANARES: Okay. I just want to --

25 I just want to make sure the witness isn't

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1 inadvertently misled. I don't ascribe any

2 intention to do so, but I -- I just --

3 MS. WARREN: This is why I'm asking him

4 what each page is so --

5 MR. CASTANARES: Okay. We understand it.

6 Thank you, counsel.

7 MS. WARREN: -- that we can learn.

8 Q. (By Ms. Warren) Turning to page 428073,

9 do you recognize that page?

10 MR. CASTANARES: I hate to keep

11 interrupting, but my copy doesn't have that page

12 in it unless it's out of order someplace, but

13 no.

14 THE WITNESS: I don't recognize 073.

15 MS. WARREN: Tony, it should be behind the

16 last page of the note account statement.

17 MR. CASTANARES: Okay. All right. Excuse

18 me. I'm sorry. It must be out of order also

19 somehow or another because it's ahead of 077,

20 but I do have 428073 now. Thank you. Sorry.

21 Q. (By Ms. Warren) Mr. Muir, take a look at

22 the next page, 428077. Do you recognize that page?

23 A. Again, I don't have a recollection of this

24 particular page, but I think I know what this

25 document is generically if that's helpful.

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1 Q. Yes. Please tell me.

2 A. This appears to be the top worksheet in an  
3 Excel file and in that Excel file was summarized the  
4 cash transactions in Oakwood Homes' concentration  
5 bank account at Wachovia or First Union, depending on  
6 the time period we're speaking of. So this is a  
7 summary by day of the inflows and outflows of the  
8 master top level if you will Oakwood bank account.

9 Q. And you anticipated my next question. I  
10 was going to ask you to tell us what the  
11 concentration account is.

12 A. Yeah. The concentration account is the  
13 master account if you will into which ultimately  
14 deposits into all other First Union accounts that  
15 were Oakwood accounts would ultimately flow into that  
16 concentration account. That concentration account  
17 also funded withdrawals against any number of Oakwood  
18 bank accounts, but they were all funded out of this  
19 one master concentration account.

20 Q. What was the purpose of having an account  
21 like that?

22 A. Companies frequently set up bank accounts  
23 for specific purposes. For example, we had a bank  
24 account out of which we wrote checks and accounts  
25 payable. It was helpful to have an accounts payable

1 it stay in the subaccount?

2 A. Unless we had it set up to the contrary.  
3 which we seldom did, at the end of the day any debit  
4 position in the zero bank account -- zero balance  
5 account would be funded from the concentration  
6 account. If the net transactions for the day were  
7 positive, more deposits than withdrawals, the net  
8 credit balance at the end of the day would be swept  
9 and would be moved to the concentration account, so  
10 yes.

11 Q. And I take it that the concentration  
12 account and the subaccounts were all Oakwood Homes  
13 Corporation accounts; is that right?

14 A. All of the ZBA accounts -- make sure I'm  
15 saying this correctly. Yes. All of the ZBA accounts  
16 that were linked to the concentration account would  
17 have been Oakwood Homes' accounts or an Oakwood  
18 subsidiary.

19 Q. Well, that's what I was getting at. Were  
20 any of Oakwood's subsidiaries able to have their  
21 accounts backed by the concentration account if you  
22 will?

23 A. Yes.

24 Q. And which subsidiaries?

25 A. Oakwood Acceptance, Homes by Oakwood,

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1 bank account separate from an account from which you  
2 wrote payroll checks and it was helpful to have those  
3 accounts separate from an account you used to make  
4 disbursements on construction loans, but it's very  
5 inefficient to maintain cash balances in all of those  
6 different bank accounts.

7 So what one does is you set up those  
8 subsidiary accounts if you will, accounts payable,  
9 payroll, construction loan funding, you set them up  
10 as what are called ZBAs, zero balance accounts. It's  
11 a mechanical technique that the banks make available  
12 to us that all of Oakwood's cash is kept in the  
13 concentration account.

14 At the end of every business day all of  
15 the checks drawn or presented against any of those  
16 other accounts which have no money in them, the  
17 computers at the bank automatically make a transfer  
18 out of the concentration account into each of those  
19 other accounts to enable those fundings to take  
20 place, but it enables different pieces of the company  
21 to have their own bank accounts without maintaining  
22 cash in anything but one single account.

23 Q. And if money came into one of the  
24 subaccounts, say the construction account, would it  
25 in turn flow into the concentration account or would

1 Oakwood Mobile Homes, a lot of them.

2 Q. Please take a look at the next page.  
3 OHCLT-428070. Do you recognize this page?

4 A. No. I don't.

5 Q. Do you recognize the handwriting on it?

6 A. No. I don't.

7 Q. Please take a look at the last page of  
8 this exhibit, OHCLT-428078. Do you recognize this  
9 page?

10 A. No. I don't recognize this.

11 Q. Do you recognize the handwriting on the  
12 page?

13 A. It looks familiar, but no. I don't  
14 remember whose handwriting that is.

15 Q. It's very neat.

16 A. It is.

17 Q. And looking back at page 428054 of  
18 Exhibit 216, do you recognize the handwriting on that  
19 page?

20 A. I do not.

21 Q. Please take a look back at the two pages  
22 of Exhibit 216 that appear to be an E mail, and those  
23 are pages OHCLT-428050 to 051. Just take a minute  
24 and read it over. It's from Doug Muir apparently to  
25 Susan Menkhaus dated Thursday, May 10th, 2002. Do

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1 you have any recollection what this E mail exchange  
2 was all about?

3 A. I don't have any recollection of this E  
4 mail, but I can read it and I know what it's about.

5 Q. What's it about?

6 A. This is -- there's two messages here. The  
7 first one which is in about the middle of the page is  
8 a memo from Susan Menkhaus at CSFB to a number of  
9 people, including me, in which she is transmitting  
10 the closing memo for the 02-B transaction that  
11 according to this was scheduled to close May 31.

12 Q. And that was a securitization; correct?

13 A. It was. And it appears that Susan was  
14 seeking confirmation that the dollar amounts inserted  
15 in the closing memo were correct just based on  
16 reading what she has written here.

17 And then I'm replying and indicating to  
18 Susan let's pay Alpine 144 million. Whether that  
19 represented a change from what she had in the  
20 documents she sent, I don't know, but I'm discussing  
21 with her the amount by which the warehouse  
22 indebtedness would be reduced on the closing of this  
23 transaction.

24 Q. The loan purchase facility indebtedness?

25 A. Correct.

1 First Boston. So certainly by being asked to sign  
2 this -- I didn't sign this version -- I would be  
3 asked to say that on behalf of Oakwood I was okay  
4 with these instructions.

5 Q. And who else would have to be okay with  
6 the instructions?

7 A. Well, Alpine would have to be okay.

8 Q. Would CSFB have to be okay?

9 A. CSFB presumably as well. It's my  
10 understanding that Alpine is sponsored by CSFB. So I  
11 think the class A note agent which was CSFB, yes,  
12 they would have to be satisfied as well.

13 Q. Take a look at page 054, please. And at  
14 the top you'll see a reference to \$234,165,842.01.  
15 Do you see that?

16 A. I do.

17 Q. Is that the discounted purchase price for  
18 the full securitization as it was purchased by the  
19 underwriters?

20 A. That number is the sum of the following  
21 amounts.

22 Q. And you're referring to which page?

23 A. Page 057, which is the second page in your  
24 exhibit.

25 Q. Thank you. Go ahead.

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1 Q. So was the 144 million a payment on the  
2 principal of the class A notes?

3 A. Yes.

4 Q. And where was the 144 million going to  
5 come from?

6 A. From CSFB as part of a larger amount of  
7 money.

8 Q. The money was going to go from CSFB to  
9 Alpine?

10 A. Indirectly.

11 Q. How?

12 A. The proceeds of the securitization were  
13 paid by CSFB to the REMIC trustee. The REMIC trustee  
14 then took those proceeds and disbursed them in  
15 accordance with the instructions in the closing memo.

16 Q. So why are you saying let's pay Alpine 144  
17 million? That suggests that it's you doing it, not  
18 the trustee.

19 A. Well, it's me suggesting that the trustee  
20 be instructed to repay CSFB \$144 million.

21 Q. And who would be doing the instructing of  
22 the trustee?

23 A. Well, the trustee was instructed by the  
24 closing memo, so let's see who signed that. There  
25 was a place for me to sign it. It was prepared by

1 A. Page 057 displays the bonds that were sold  
2 on the closing date. It displays their coupon rates  
3 of interest and, importantly, their selling prices.  
4 It also displays the underwriting discount, the fee  
5 to which CSFB was entitled for selling the  
6 securities. And the sum -- it also finally includes  
7 interest which had accrued on the securities through  
8 -- or to but not including the closing date.

9 So the grand total of all of that if you  
10 take the selling price of the bonds plus the accrued  
11 interest minus the underwriting fee, the grand total  
12 is two hundred and thirty-four million one hundred  
13 sixty-five thousand and change. That is the amount  
14 of money that CSFB wired to Chase as the trustee of  
15 the REMIC.

16 Q. And I'm sorry. Did you say that this page  
17 was usually the type of page found in the closing  
18 memorandum?

19 A. It's the page that I usually attach to my  
20 copy of the closing memorandum.

21 Q. And so was this a page that Oakwood would  
22 generate?

23 A. This was a page that CSFB would generate.

24 Q. Okay. Take a look back at the account  
25 statement that's in Defendant's Exhibit 216. For

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1 what it's worth, it starts at page 059. And if you  
2 take a look at page 063 of the account statement,  
3 you'll see that at the bottom of that page there's a  
4 credit entry for \$144 million and a debit entry or  
5 that's what it appears to be. Do you see that?

6 A. I do.

7 Q. What's going on with those two entries?

8 A. It calls for a little speculation, but not  
9 much. Trying to explain this this way. If we go  
10 back and look at 054 --

11 Q. Got it.

12 A. -- Chase received a wire on the closing  
13 date from CSFB for 234 million and change. In step  
14 two, same page, Chase is being instructed to wire 144  
15 million of that to an account at the Bank of New  
16 York. That's Alpine's bank account. Now, what Chase  
17 appears to be doing here is in character for a bank  
18 trust department is they are saying that that  
19 \$144,000 is a payment to Oakwood --

20 Q. Million?

21 A. I'm sorry. Thank you. One hundred  
22 forty-four million is a payment to OMI Note Trust,  
23 and so they have reflected apparently over here on  
24 OMI Note Trust's bank account, which is page 063, the  
25 receipt of \$144 million. Then step two, they are

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1 then taking the \$144,000,000 out of the OMI Note  
2 Trust bank account and sending it to the class A note  
3 holder, who is Alpine.

4 So while the closing memo contemplated a  
5 single step on the part of Chase, Chase as all good  
6 trustees do follow every step of the transaction and  
7 reflect the money going in and out of OMI Note  
8 Trust's bank account. So there's really two  
9 transactions, money going to pay OMI Note Trust and,  
10 second, a distribution by OMI Note Trust to retire  
11 its indebtedness to Alpine.

12 I think that's why this shows up like it  
13 does. In fact, if you look at the very bottom of  
14 page 063 and look at the ABA and account numbers or  
15 the ABA number, you can see that it lines up, 144  
16 million out to Bank of New York, Alpine.

17 MS. WARREN: All right. Thank you. Let's  
18 take a little break. I'm going to see if I need  
19 to ask you about these others, which are  
20 somewhat similar to the document we've just been  
21 through, and then we'll come back on the record.

22 THE WITNESS: Okay.

23 THE VIDEOGRAPHER: We're off the record at  
24 12:41.

25 [A luncheon recess was taken.]

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1 THE VIDEOGRAPHER: This is tape number  
2 three. We're on the record at 1:53.

3 Q. (By Ms. Warren) We had previously marked  
4 an exhibit as Defendant's Exhibit 217. Mr. Muir,  
5 since you so helpfully explained the last one to us,  
6 we're going to skip over this one and we're going to  
7 show you Defendant's Exhibit 218, which is Bates  
8 numbered OHCLT-428291 to 428313 and at the top it  
9 says Credit Suisse First Boston interoffice  
10 memorandum. Please take a look at that.

11 MR. CASTANARES: Thank you.

12 Q. (By Ms. Warren) In particular please look  
13 at page Bates numbered 428305 of Exhibit 218.

14 MR. CASTANARES: Counsel, I notice this  
15 document seems to be missing some pages, too, or  
16 at least on my copy. Is that intentional?

17 MS. WARREN: I'm only going to be asking  
18 him about this one page.

19 MR. CASTANARES: Okay. I mean, I have no  
20 problem with your marking anything you'd like to  
21 mark, but I just -- if it does purport to be one  
22 document, I just don't want the witness to be  
23 inadvertently misled again. So my copy of this  
24 document skips from 294 to 305. Is that also  
25 the case with the original or at least with the

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1 copy that's been marked? Does yours go from 294  
2 to 305 or is there --

3 THE WITNESS: It does.

4 MR. CASTANARES: Oh, okay. All right. As  
5 long as I have the same copy that's been marked,  
6 have at it.

7 MS. WARREN: Yeah. I think this was how  
8 it was produced, so we can --

9 MR. CASTANARES: Okay.

10 MS. WARREN: -- only give as well as we  
11 got. And actually, I'm going to ask you about  
12 the three pages in a row, I'm correcting myself,  
13 not the one page.

14 MR. CASTANARES: Okay.

15 Q. (By Ms. Warren) So 305, 304 and 303. Do  
16 you recognize these three pages?

17 A. Not necessarily these three specific  
18 pages, but I know what these -- what they are, yes.

19 Q. And what are they?

20 A. These three pages constitute the monthly  
21 remittance report for OMI Trust 01-A for looks like  
22 the September 16th, '02 payment date.

23 Q. And this is the kind of monthly remittance  
24 report that you were testifying about earlier today;  
25 right?

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1 A. This is the one.  
2 Q. And what was the purpose of this report?  
3 A. Well, the primary purpose was to summarize  
4 the receipts on the collateral in the month, and it's  
5 all based on the preceding calendar month, to  
6 summarize any disbursements made out of the note  
7 account and to summarize the amount of money that was  
8 to be paid on the payment date and to whom it was to  
9 be paid.  
10 Q. And were these disbursements made pursuant  
11 to the sales and servicing agreement that we looked  
12 at earlier?  
13 A. I believe that they were.  
14 Q. And to your recollection was that the case  
15 with all of the disbursements made from the note  
16 account? They were in accordance with the sales and  
17 servicing agreement?  
18 A. I'm not aware of any disbursements that  
19 were not in accordance with either the sale and  
20 servicing agreement or the transaction agreements  
21 broadly.  
22 Q. Mr. Muir, it's been alleged in this case  
23 that transfers of money from the OMI Note Trust to  
24 Credit Suisse are actually property of the debtor,  
25 property of Oakwood. Can you think of any reason why

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1 that would be the case?  
2 MR. CASTANARES: I object to the form of  
3 the question. I also have substantive  
4 objections to the question, but I want to  
5 preserve my form objection.  
6 THE WITNESS: I don't think I have a view  
7 on that.  
8 Q. (By Ms. Warren) You can't think of a  
9 reason why that would be the case?  
10 A. I can't, but I'm not also the world's most  
11 creative thinker either.  
12 Q. Fair enough. Mr. Muir, did there come a  
13 time when you were retained or employed by the  
14 liquidation trust in this case?  
15 A. Yes.  
16 Q. And when was that?  
17 A. On or about August 13th or so of '04.  
18 Q. How did that come about?  
19 A. We had sold the business to Berkshire  
20 Hathaway and the trustee that took over immediately  
21 after that occurred needed some people to handle  
22 various affairs for the trust. And they made me an  
23 offer to stay around and help them do that.  
24 Q. What was the agreed compensation?  
25 A. Oh, gosh. They were paying me -- I can't

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1 remember the exact form or how it worked out, but  
2 they were paying me an equivalent annual rate of  
3 about \$400,000. And they put in on a number of  
4 occasions bonus arrangements, tasks that they wanted  
5 me to accomplish and to the extent that I  
6 accomplished the task, I could earn incentive comp.  
7 Q. What were the various tasks that were  
8 subject to a potential bonus?  
9 A. Gosh, there were -- at least a couple were  
10 three different lists, but I'll tell you the ones I  
11 can remember off the top of my head. They were  
12 things like closing bank accounts that had been in  
13 the Oakwood Homes name  
14 Negotiating the purchase price adjustments  
15 with Clayton Homes, the buyer of the business, was a  
16 very, very big element of it because there were many  
17 items that had to be negotiated in terms of how  
18 formulas operated, how accounting rules operated, how  
19 to interpret what the transaction documents said in  
20 the context of accounting principles.  
21 There were a number of tasks related to  
22 claims matters, getting certain claims matters  
23 resolved, getting certain claims matters resolved in  
24 certain ways, realizing on certain assets of the  
25 trust that were not in cash the day the trustee took

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1 over. Those come to mind there. I'm certain there  
2 were more.  
3 Q. Did you -- strike that. Were you given  
4 any particular goals with respect to this litigation,  
5 the trust litigation against Credit Suisse?  
6 A. Only to cooperate with the trust and  
7 assist them in dealing with the matter. There were  
8 no goals set for the amount of CSFB's claim, the  
9 amount of any dollar amounts at all.  
10 Q. Is there any financial incentive for you  
11 that's related to the total recovery of the trust?  
12 A. There is an incentive under the terms of a  
13 performance agreement that the bankruptcy court and  
14 the creditors' committee signed off that -- under  
15 which if the ultimate dollar distributions to  
16 unsecured creditors goes over a certain dollar amount  
17 -- excuse me -- then I'm entitled to incentive  
18 compensation, and I think that it's actually stair  
19 stepped.  
20 Q. Do you remember what the trigger numbers  
21 are?  
22 A. There's -- I'm pretty certain that there's  
23 a trigger at 250 million distribution to unsecured  
24 creditors. If that is achieved, I think I'm entitled  
25 to \$100,000. There's another trigger I think at 275

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1 million and I'm entitled to something if that  
2 happens, but I don't know what it is.  
3 Q. More than a hundred thousand?  
4 A. You know, I don't remember.  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18 Q. Did anyone interview you to collect  
19 information for this lawsuit?  
20 MR. CASTANARES: At any time?  
21 MS. WARREN: Yes.  
22 THE WITNESS: I had lots of discussions  
23 with the trustee, the trustee's personnel, with  
24 counsel of the trustee about our relationship  
25 with CSFB, the kinds of things that CSFB did for

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1 us, the nature of the transactions, how  
2 transactions were structured. I don't know when  
3 somebody told me it was for the purpose of  
4 filing a claims objection, but I've discussed,  
5 obviously, a lot of matters with the trustee and  
6 its counsel related to the CSFB-Oakwood  
7 relationship.  
8 Q. (By Ms. Warren) So at some point you were  
9 told that a claims objection would be made against  
10 Credit Suisse?  
11 A. Yes.  
12 MR. CASTANARES: I'm going to caution the  
13 witness not to reveal -- I don't know. I have  
14 no problem. Let me ask you this. Assuming that  
15 that came from counsel and would otherwise be  
16 privileged, will you stipulate that his  
17 answering, my refraining from instructing him  
18 not to answer it will not be opening the door to  
19 any kind of broader waiver but just to simply  
20 this question?  
21 MS. WARREN: I wouldn't argue a waiver  
22 based on that question. It's just a piece of  
23 factual information.  
24 MR. CASTANARES: Okay, fine. Go ahead and  
25 answer.

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1 THE WITNESS: In fact, would you repeat  
2 the question or read it back?  
3 MS. WARREN: I think he did answer the  
4 question.  
5 MR. CASTANARES: I think you did. It was  
6 at some point you were told there was going to  
7 be a claims objection filed, is that right, and  
8 I think you said yes?  
9 THE WITNESS: Yes  
10 Q. (By Ms. Warren) Were you given a copy of  
11 the claims objection in a draft form to review before  
12 it was filed?  
13 A. No.  
14 Q. Did you ever have occasion to see the  
15 final filed version of the claims objection?  
16 A. I was given a -- a version which I assume  
17 was the filed version, but my understanding is when  
18 it was given to me it had already been filed.  
19 Q. And do you remember approximately when you  
20 were given the copy?  
21 A. My recollection is it wasn't that long  
22 after it was filed, but I don't remember when it was  
23 filed so I can't be more precise.  
24 Q. At some point in time did your retention  
25 by the trust end?

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1 A. Yes.  
2 Q. When was that?  
3 A. I sent the trustee's representative an e  
4 mail around the end of June of 2005 terminating the  
5 contract as I recall.  
6 Q. Why did you want to terminate the  
7 contract?  
8 A. That I had gone to work for an employer  
9 and the company's employment policies prohibit me  
10 from having other employment outside my employment  
11 for my existing employer. So I wanted the record to  
12 be clear that I was terminating that employment  
13 relationship and that employment contract.  
14 Q. Who was your new employer?  
15 A. A company called Krispy Kreme Doughnuts,  
16 Inc.  
17 Q. And you're still employed by Krispy Kreme?  
18 A. I am.  
19 Q. What's your role there?  
20 A. I'm the chief accountant.  
21 Q. Do you have any other employment now?  
22 A. I do not.  
23 Q. Mr. Muir, we had talked earlier about the  
24 reasons why Oakwood Homes and its subsidiaries filed  
25 for bankruptcy. And I believe you told me, and

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1 correct me if I'm wrong, that the three primary  
2 factors in your mind were a downturn in the industry,  
3 that the company expanded more rapidly than it should  
4 have and the company was using insufficiently  
5 stringent underwriting standards; is that correct?

6 A. I think those were the three factors that  
7 I cited as most readily coming to mind. If I thought  
8 about it some more I might come up with some others  
9 equally important, but those are three that are  
10 etched in my memory.

11 Q. All right. Well, we'll talk a little bit  
12 about those and if anything else comes to mind, feel  
13 free to let me know. A downturn in the industry,  
14 when did that begin?

15 A. I think most people would date the  
16 beginning of the industry decline as probably 1998,  
17 1999, certainly by '99.

18 Q. What was the nature of the downturn?

19 A. By 1999 there was a -- began to be a  
20 pronounced decline in sales. And while retail sales  
21 statistics, the number of homes sold at retail are  
22 hard to come by, data about the number of homes sold  
23 by manufacturers to retailers is pretty readily  
24 available. So we began to see a fairly pronounced  
25 down tick in terms of shipments from manufacturers to

1 industry to us and to others. And I think in  
2 retrospect we probably built the business more  
3 rapidly than we should have and more rapidly than our  
4 ability to effectively manage it.

5 Q. Did Credit Suisse have any role in the  
6 decisions to build more sales centers and to expand  
7 rapidly?

8 A. Not to my knowledge.

9 Q. The other factor that you mentioned was  
10 insufficiently stringent underwriting standards.  
11 Explain that to me.

12 A. I think the record shows over the  
13 long-term that a lot more loans that were  
14 underwritten at Oakwood, loans that were -- consumer  
15 loans that we did for people to buy houses, a more  
16 than acceptable number of those failed to perform.  
17 That certainly wasn't limited to Oakwood.

18 It was limited to a lot of lenders. There  
19 were certainly many poor lending practices that  
20 developed in the industry during the '90s and we  
21 adopted our fair share of some poor practices.

22 Q. What were the poor practices?

23 A. There were a number. I testified about  
24 DPAP.

25 Q. Yes.

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1 retailers that's usually indicative of slower retail  
2 demand, you know, from retail consumers. We saw  
3 companies that loaned money to consumers to enable  
4 them to buy homes, we saw lenders exiting the  
5 business. Just generally, you know, slower consumer  
6 demand, less lending availability and reduced rates  
7 of operation in factories generally.

8 Q. How long did that downturn continue? How  
9 long did it last?

10 A. It may still be going on. When I was last  
11 involved in the industry in I guess theoretically in  
12 '04, we were still operating the business before we  
13 sold it and it had not corrected then.

14 Q. The next factor was that the company  
15 expanded more rapidly than it should have. Explain  
16 that to me.

17 A. I think in retrospect our ability to build  
18 sales centers, put inventory on sales centers was  
19 perhaps greater than our ability to successfully  
20 operate sales centers profitably for the long-term.  
21 I think we probably built too many sales centers. I  
22 think we probably built too many factories.

23 And the industry had a very sustained  
24 run-up prior to 1998, 1999. Credit was easily  
25 available. Money was easily available in the

1 A. That was a very small one. It was very  
2 useful in enabling us to bring about some management  
3 change, but in absolute terms it was not a big deal.  
4 The worst decision that was made in the industry in  
5 which we participated in my view was the decision  
6 that was made by Greentree, who is the largest lender  
7 in the industry, along about 1994 to reduce the  
8 minimum downpayment level that customers were  
9 generally required to make in order to purchase a  
10 home. Prior to 1994 this had been always at least a  
11 minimum ten percent cash down business.

12 In what I think was a move to gain market  
13 share, Greentree, the largest player, virtually  
14 overnight changed it to a five percent down business  
15 and that ultimately proved to be a very poor decision  
16 in which we participated.

17 Q. So Oakwood's management followed suit as  
18 to your lending practices after Greentree instituted  
19 this change?

20 A. We did.

21 Q. And I think I can guess what the effect  
22 was, but tell me what the effect of that change was.

23 A. Well, I think the -- I haven't studied a  
24 lot of the statistics, but there are plenty of them  
25 out there that show that relatively lower downpayment

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1 loans tend to perform relatively poorly compared to  
2 loans where customers had higher cash downpayments.

3 Q. Did Credit Suisse have any role with  
4 respect to the change to the lower downpayment?

5 A. Not to my knowledge.

6 (Exhibit Number 219 was marked for  
7 identification.)

8 Q. (By Ms. Warren) I've asked the court  
9 reporter to mark as Exhibit 219 a document entitled  
10 Oakwood Homes Corporation minutes of special meeting  
11 of the board of directors held Wednesday, June 30th,  
12 1999. It's Bates numbered KCLH-0938 to 0943. No  
13 page is missing that I can see. Do you recognize  
14 this document?

15 A. I don't.

16 Q. Does it appear to you to be board minutes  
17 from Oakwood Homes Corporation?

18 A. Yes.

19 Q. I want to refer you to the bottom  
20 paragraph of the first page of Exhibit 219 and the  
21 paragraph that follows, and just let me know if you  
22 -- if you generally agree with what's in those  
23 paragraphs?

24 A. This is the paragraph beginning Mr. St.  
25 George began the meeting?

1 of pocket to pay for it. The deal in the MH business  
2 at the time was that the company would finance the  
3 points for you.

4 So if you -- if you get -- customer gets a  
5 lower rate of interest but gets a higher up front  
6 loan balance. That's the distinction. That was  
7 going on. It was a poor lending practice in my  
8 judgment. So yeah, that was going on. I think what  
9 Nick said here is consistent with my recollection of  
10 what life was like at the time.

11 (Exhibit Number 220 was marked for  
12 identification.)

13 Q. (By Ms. Warren) I'm showing you a  
14 document that's entitled Oakwood Homes Corporation  
15 minutes of special meeting of the board of directors  
16 held Monday, August 2, 1999. It's Bates number  
17 KCLH-956 to 959. Mr. Muir, does this appear to you  
18 to be minutes of Oakwood Homes Corporation's board  
19 meeting?

20 A. Yes. It does.

21 Q. Would you take a look, please, at the  
22 second page of the document, specifically the third  
23 paragraph down, that begins Mr. St. George then  
24 began? Would you read that over and let me know when  
25 you're finished?

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1 Q. Yes.

2 A. And running to the first paragraph on the  
3 next page?

4 Q. Yes. Ending at key markets.

5 A. This all sounds pretty familiar.

6 Q. Do those paragraphs strike you as a  
7 generally accurate account of what was going on at  
8 the time in the industry and with the company?

9 A. More so the first paragraph than the  
10 second one. I mean, the second one is Edwards  
11 talking about what he's going to do about it. I  
12 mean, he does talk about what competitors are doing,  
13 discounting homes, rate buy-downs. I remember that.

14 Q. What's a rate buy-down?

15 A. A rate buy-down is a -- is like discount  
16 points in the mortgage world in which the customer is  
17 offered a rate of interest on a loan that is less  
18 than the currently prevailing fixed rate in exchange  
19 for an up front payment, like a mortgage discount  
20 point.

21 The difference between what was going on  
22 in the industry and the conventional mortgage world  
23 at the time is if you wanted to buy down a rate at  
24 mortgage world, you showed up with the cash to pay  
25 the discount point at closing. You had to come out

1 A. I've read it.

2 Q. Does that paragraph generally comport with  
3 your recollection of what was going on in the  
4 industry at the time?

5 A. I remember all these events. I mean, at  
6 the time, yeah. The answer is yes.

7 Q. Would you explain to me the reference to  
8 widening spreads in the securitization markets at the  
9 bottom of the paragraph?

10 A. Yes. That is referring to the -- an  
11 expansion in the rate of interest that must be paid  
12 on an asset backed security in order to induce a  
13 customer to buy it in that rate that the customer  
14 demands, the buyer of the bond demands over  
15 prevailing risk-free rates in the capital markets.

16 Frequently in talking about interest rates  
17 on asset backed securities or corporates for that  
18 matter, rather than speak in absolute -- terms of  
19 absolute rates which change from day to day, you  
20 speak of them in terms of spread to treasuries.

21 You can get a ten-year bond sold at  
22 treasuries plus 200 or you can get a LIBOR floater  
23 done at 1 plus 38, but it's referring to the spread  
24 between the necessary rate to attract a buyer and the  
25 rate of an underlying risk-free security of

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1 comparable duration. So what Nick is saying is  
2 spreads are widening out. Investors are demanding a  
3 higher spread over a risk-free rate in order to  
4 purchase the securities.

5 Q. And was this particularly relevant to the  
6 2004 and 2009 bonds?

7 A. This is not talking about corporates.  
8 This is talking about the asset backed securities  
9 that we were buying -- or we were selling.

10 Q. And what impact did that have on Oakwood?

11 A. It adversely -- all things being equal, it  
12 adversely affects profitability because the cost of  
13 permanent financing for your loans is -- increases  
14 when credit spreads widen. And unless you're able to  
15 raise the rates you're charging to customers to  
16 correspond for that, you have a profit margin  
17 squeeze.

18 Q. Turning to the first page of Exhibit 220,  
19 there's a reference in the last paragraph to  
20 management's pursuit of a management led buy-out of  
21 the corporation. Do you see that?

22 A. Yes. I see that.

23 Q. Was that something that you were involved  
24 in?

25 A. To some extent, yes.

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1 Q. Why was consideration being given to a  
2 management led buy-out of the corporation?

3 MR. CASTANARES: Counsel, could you  
4 specify by whom or I'll just object to the form  
5 of the question.

6 MS. WARREN: You can go ahead and answer.

7 THE WITNESS: I'm sorry. What was the  
8 question again, please?

9 Q. (By Ms. Warren) The question was what is  
10 your understanding of why a management led buy-out of  
11 the corporation was being considered?

12 A. My understanding at the time was that Nick  
13 St. George, who was then the CEO, observing that the  
14 stock price had been under considerable pressure,  
15 that it was way, way off its highs that were reached  
16 early in '98 and having watched, you know, LBO-type  
17 transactions happen in other industries, wondered if  
18 there was an opportunity that would be in the  
19 interests of the shareholders for management to try  
20 and buy the company and take it private.

21 Q. To your knowledge were any outside  
22 financial advisors consulted about this possibility  
23 of a management led buy-out?

24 A. Yes.

25 Q. And who was that?

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1 A. To the best of my recollection a firm by  
2 the name of Soles Brower Smith was involved in that  
3 potential transaction. I guess Lanty Smith, who was  
4 the Smith name in that firm, happened to be a  
5 director of Oakwood. So as I recall, Soles Brower  
6 was involved in talking to management, mainly to  
7 Nick, but also to me and to others about, you know,  
8 whether a deal could be put together and that would  
9 make sense.

10 Q. Did Oakwood Homes use Soles Brower to  
11 advise on any other potential transactions or  
12 financings?

13 A. Let me clarify one point. I'm not sure --  
14 and again, my recollection of this is a little hazy,  
15 but I'm not sure Soles Brower Smith was working for  
16 the company when we were talking about a management  
17 buy-out. I think they were talking to management.  
18 So I'm not sure Soles -- you see my point?

19 At some point I believe -- and I'm certain  
20 that it's prior to the time when we filed for  
21 bankruptcy -- we had some additional discussions with  
22 Soles Brower Smith about the state of the industry,  
23 the state of the company, what we might do about it.  
24 I don't believe we ever signed an engagement letter  
25 with respect to, you know, rendering financial

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1 advice; but they -- Soles Brower was involved  
2 pre-filing as I remember in helping us put together  
3 some financial projections. I wasn't directly  
4 involved in that. That was more Bob Smith's thing.

5 They may have been involved in -- I  
6 believe they were if my memory serves, in making some  
7 informal inquiries around the industry to see if  
8 there were strategic buyers that might be interested  
9 in buying the company. Again, whether there was a  
10 formal engagement letter signed on that, I don't  
11 know, but I think there must have been because I know  
12 they were paid money for services at least in respect  
13 to putting together some financial projections.

14 Q. Who was the point person dealing with  
15 Soles Brower in the 2002 time frame?

16 A. I think Suzanne Wood. She was running the  
17 accounting operation at that time, was involved with  
18 them. Bob Smith, probably Myles. I really had very  
19 little to do with it. I was trying to manage the  
20 liquidity side of the game and keep the place  
21 organized and running, but I think each of those  
22 three probably were involved with Soles Brower and  
23 the work that they did.

24 (Exhibit Number 221 was marked for  
25 identification.)

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1 Q. (By Ms. Warren) Changing topics a bit,  
2 I'm showing you a document that the court reporter  
3 has marked Defendant's Exhibit 221. It's an E mail  
4 attaching what looks like a presentation. The E mail  
5 is from Susan Monkhaus to you dated Wednesday, March  
6 28th, 2001. Would you just take a look through this  
7 document briefly and let me know when you're  
8 finished?

9 A. Okay. I've reviewed it.

10 Q. Does this document refer to the servicing  
11 advance facility that eventually Oakwood implemented?

12 A. It certainly refers to a concept for a  
13 facility. This doesn't appear to be the exact form  
14 in which it was ultimately implemented, but it's the  
15 same basic transaction.

16 Q. Okay. And as I think you testified  
17 earlier that a version of this structure or  
18 transaction was implemented by Oakwood?

19 A. That's correct.

20 Q. And you thought this was a helpful idea  
21 from Credit Suisse?

22 A. I did.

23 Q. What -- in the course of particularly 1999  
24 to 2001 what, if any, other ideas that Credit Suisse  
25 proposed to the company did you find helpful?

1 you got from the purchaser of the IO, and it was a  
2 very creative idea and we employed it in a number of  
3 deals. That's one.

4 I'm sure if I -- if you have an inventory  
5 of neat things we did during that time frame, I could  
6 give you some more, but there were some very  
7 innovative ideas that came out of First Boston.

8 Q. Okay. Were there any ideas floated to you  
9 by Credit Suisse that management rejected?

10 A. I'm sure there were. There were -- there  
11 had to have been.

12 Q. And when you say there had to have been,  
13 why do you say that?

14 A. Well, I can remember one and there were no  
15 doubt more because we'd hear from CSPB. I think they  
16 were thinking about us, thinking about our situation,  
17 thinking about our industry, thinking about how they  
18 could be helpful, thinking how they could make some  
19 fees and they pitched ideas.

20 I remember some of them being really bad  
21 ideas or at least one, but there may have been some  
22 -- you know, some good ones. Certainly I've already  
23 testified there were some good ideas as well.

24 Q. Shall we take a short break?

25 A. Sure.

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1 A. That would require an inventory of the  
2 ideas. Could you ask the reporter to read back the  
3 question? I just want to make sure I'm answering the  
4 question that you asked.

5 MS. WARREN: Absolutely.

6 (The record was read by the reporter.)

7 Q. (By Ms. Warren) And let me just amend  
8 that to say I meant to say through the petition date.

9 A. There were -- one that comes to mind is  
10 Fiachra or his team came up with a structural change  
11 to the ABS transactions that we had not previously  
12 employed that was beneficial to us economically.

13 And it was a very creative idea in terms  
14 of playing off an arbitrage between the rating  
15 agencies and the fixed income markets, but the basic  
16 concept was taking a chunk of the excess spread in  
17 the transaction, the difference between the rate of  
18 interest on the loans and the rate of interest  
19 accruing on the bonds that is of limited value from a  
20 rating agency point of view, and taking something  
21 that they didn't think was worth very much and  
22 creating a security out of it and creating an IO that  
23 was -- that investors were willing to pay a lot of  
24 cash for in the bond market. What you gave up with  
25 the agencies was not nearly so valuable as the cash

1 THE VIDEOGRAPHER: We're off the record at  
2 2:36.

3 (A recess was taken.)

4 THE VIDEOGRAPHER: We are on the record at  
5 2:47.

6 Q. (By Ms. Warren) Mr. Muir, are you aware  
7 of something called Project Coconut?

8 A. Gee, I remember the name.

9 Q. And I will tell you there's a document in  
10 the files called Project Coconut and it has the Soles  
11 Brower firm name on it.

12 A. Okay. That -- that might have been the  
13 management buy-out secret code name. I remember we  
14 had that code name for something, but I can't connect  
15 the dots. I'm sorry.

16 MS. WARREN: Well, let me try and dig that  
17 out for you.

18 (Discussion off the record and Exhibit  
19 Number 222 was marked for identification.)

20 Q. (By Ms. Warren) I'm showing you a  
21 document that the court reporter has marked  
22 Defendant's Exhibit 222. It's entitled Project  
23 Coconut briefing book dated September 18th, 2001 with  
24 the Soles Brower name on it and it's Bates numbered  
25 RCDA-010432 to 01432.42.

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And if you would just page through it

briefly. I'm not going to ask you any details about the document, but I just want to see if it refreshes your recollection about what the project was and what Soles Brower's role was?

A. Looks like something -- it had something to do with some plan to do something with Albany, Oregon and the Buckeye, Arizona plant. There may be some sales centers out there. This is vaguely familiar, but I'm honestly drawing a blank.

MS. WARREN: That's fine. We won't spend any more time on it then.

(Exhibit Number 223 was marked for identification.)

Q. (By Ms. Warren) Mr. Muir, we had spoken earlier about the loan assumption program and I'm showing you a document that I think is related to that. It's now been marked as Defendant's Exhibit 223.

It's an E mail chain starting with one from Jeff Hinshaw to Suzanne Wood dated Monday, March 25th, 2002, and the document is Bates numbered 32599 to 32575 OHC. I should correct that. I think we want the Bates number -- I think we want the Bates range is OHCLT-07303.

going through repo. This appears to me to be an attempt to try and see if that's true.

MR. CASTANARES: Are we through with this one, counsel?

MS. WARREN: Yes.

MR. CASTANARES: Thank you.

(Exhibit Number 224 was marked for identification.)

Q. (By Ms. Warren) I'm showing you a document marked as Defendant's Exhibit 224 entitled Oakwood Homes Corporation minutes of the meeting of the board of directors held Monday, July 29, 2002. And I note that the document states Douglas R. Muir, secretary of the corporation, served as secretary of the meeting. Do you see that?

A. I do.

Q. Do you recognize this document?

A. No, but I'll -- that's my signature on the second page of it, so I'm probably its author.

Q. All right. Take a look at the bottom paragraph on the first page. And by the way, this document is Bates numbered MNAT-006776 to 6777. In the last paragraph Mr. Standish is reporting -- the last paragraph on the first page Mr. Standish is reporting among other things that he had undertaken

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MR. CASTANARES: And once again, counsel, I only inquire here to make sure we've got the same copies, et cetera. The next page I have is 07284.

MS. WARREN: Yes, yeah. It's 07303, 07284, 07285 and 07286. So it could be two documents.

Q. (By Ms. Warren) And Mr. Muir, you are -- your name appears in the to chain further down on the first and second pages. So I'm just wondering whether you're familiar with the correspondence in this document or whether it rings a bell?

A. This is vaguely familiar, but I can't say I have a clear recollection of it.

Q. I was going to ask if this was around the time when the company was beginning to learn that the increased loan assumption program wasn't working out?

A. I would infer from this that we were clearly revisiting the effectiveness of the loan assumption program. And I draw that conclusion because he's comparing the expenses incurred on homes that went through the LAP program versus expenses that went through on repos. One of the drivers behind the decision to do LAP to begin with was that the expenses per unit would be materially lower than

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discussions with Credit Suisse First Boston about retaining that firm as a financial advisor as well as considered other potential financial advisors. Do you see that in the document?

A. I do.

Q. What other financial advisors were being considered around this time?

A. There were other names that were in the pot. Gosh, I've got to think back. Houlihan Lokey was one I recall. Gosh, been a long time. There were a handful of others, you know, on a list to be talked about and considered. Houlihan Lokey I know comes to mind. I can't remember who the others were.

Q. And how -- what was the process for considering these other firms as well as for Credit Suisse?

A. In terms of how they came to be on the list to be evaluated or --

Q. How were they evaluated? How did you make the decision?

A. Myles and I discussed financial advisors in this time frame and kind of debated pros and cons. One thing that I remember particularly was that Oakwood had a fairly complex business model and I think Myles and I agreed that if we hired a financial

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1 advisor, it was going to need to be somebody that was  
2 capable of understanding and coordinating the  
3 constituencies associated with three rather different  
4 businesses. And we had trade credit, traditional  
5 commercial industrial-type business in the  
6 manufacturing side of the house.

7 We had a multi-unit retail operation that  
8 had its own set of issues. We had a seven or eight  
9 hundred million dollar a year production finance  
10 company with a \$5 billion servicing portfolio and a  
11 whole set of constituents associated with that  
12 business, ABS security holders, investment bankers,  
13 rating agencies, then three businesses that operated  
14 together but that had very different liquidity needs  
15 and a fairly long cycle between buying 2 x 4s up here  
16 at the front end of the process and securitizing a  
17 loan on the back end.

18 And it was going to take a fairly  
19 sophisticated and talented firm to be able to  
20 understand all those constituencies that were  
21 involved, B2 guarantee holders, corporate debt  
22 holders, liquidity providers. And that was a big  
23 consideration at the time when we talked about the  
24 relative merits of the people that were on the list.

25 Q. Did you have pitches from any of these

1 bankrupt Oakwood and run it through that process, if  
2 that were the decision, what you were going to do  
3 about warehousing credit, what you were going to do  
4 about your ABS bondholders, guarantees in place for  
5 those, were you going to be able to successfully  
6 securitize and finance your business in bankruptcy,  
7 CSFB was in a unique position to advise us on that  
8 because they were just -- that's what they did for  
9 us.

10 They had done that to the virtual  
11 exclusion of all others, you know, for eight years.  
12 So we thought, you know, they had the horsepower to  
13 do the job and were uniquely suited to do it. At  
14 least that was my view.

15 Q. And was the hiring of Credit Suisse to be  
16 the financial advisor approved by the board?

17 A. I don't specifically remember it. The  
18 minutes would show, but we would never have signed  
19 onto a letter like that without getting the blessing  
20 of the board formally or informally.

21 Q. And when you say you wouldn't have signed  
22 onto a letter like that, what do you mean?

23 A. The August contract.

24 Q. Right. But what do you mean a letter like  
25 that?

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1 other potential financial advisors?

2 A. I don't remember if we did or not. I  
3 don't recall any, but that's not to say that we  
4 didn't get a pitch book, have a sit down. I just --  
5 I can't say that there weren't any, but I don't  
6 remember any.

7 Q. And why ultimately did you and Mr.  
8 Standish decide on Credit Suisse to be the financial  
9 advisor?

10 A. I think there were probably others  
11 involved in the decision, but I was in favor of CSFB  
12 and I think Myles shared this view for a couple of  
13 reasons, maybe three. First, they had a very, very  
14 long history with the company going back to 1994, so  
15 we had had a chance to see a lot of them. We knew  
16 the caliber of the people they typically brought to  
17 the table.

18 We liked them. We trusted them. So that  
19 was important to us. Number two, they had a good  
20 reputation from what we had been able to glean in  
21 some tough, complex bankruptcy or financial  
22 restructuring situations. So it had a good  
23 reputation. Third, we thought they had the skill  
24 sets to bring together and understand the different  
25 facets of the business because if you're going to

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1 A. It was a significant contract for very  
2 important services in a very difficult time of the  
3 business. And we would not have engaged someone to  
4 render services that were that important without  
5 getting at least the implicit approval of the board.

6 Q. Who is Andrew Davidson?

7 A. Andy is I think the owner or the principal  
8 owner of a company called Andrew Davidson and Co. He  
9 is a former Merrill Lynch research person. I think  
10 he's a Ph.D. in economics and in the Andrew Davidson  
11 business runs quantitative analysis typically on  
12 asset backed securities.

13 Q. Was the -- was Andrew Davidson's company  
14 retained by Oakwood?

15 A. Yes.

16 Q. How did that come about?

17 A. We -- my recollection is in consultation  
18 with CSFB we concluded that because the potential  
19 claims in the bankruptcy by the holders of corporate  
20 guarantees on certain B2 securities, because those  
21 claims were apt to be very large but were contingent  
22 I think the word the lawyers use is liquidated and,  
23 therefore, you know, determining exactly what the  
24 size of their claims were going to be in any  
25 bankruptcy was going to be important and potentially

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1 a contested matter. I think we concluded that while  
2 the company had the modeling technology to forecast  
3 the amount and timing of payments that might become  
4 due under the B2 guarantees, that perhaps the  
5 debtor's judgment might be called into question in  
6 the bankruptcy.

7 So we concluded that somebody independent  
8 of the company needed to take a stab at putting a  
9 value on the B2 guarantee claims so that we would  
10 know how big a player the holder of those claims was  
11 going to be in the case if we decided to file it.

12 Q. How was the choice made to use Andrew  
13 Davidson's company as opposed to another company?

14 A. My recollection is they were the only name  
15 on the table. And we got the name from CSPB and they  
16 were recommended as being somebody who was good at  
17 this kind of thing and sufficiently independent, you  
18 know, from management and from CSPB for that matter.

19 Q. Did you ask Credit Suisse for  
20 recommendations for this -- to fill this role?

21 A. We did, because I remember we discussed  
22 whether it was something CSPB could do and I think we  
23 all just concluded that CSPB was too close, that we  
24 needed somebody without a dog in the hunt so to speak  
25 to render an expert's opinion we could hold out as a

1 else and we'll talk about it at a break?

2 MS. WARREN: We can go on. Will you just  
3 mark that question?

4 MR. CASTANARES: Yes. Would you just read  
5 the question back to me again, please, so I'll  
6 have it in my --

7 THE COURT REPORTER: Sure.

8 (The record was read by the reporter.)

9 MR. CASTANARES: It could be we could just  
10 take a break in the corner here for a second and  
11 answer the question. I suspect it's probably he  
12 got that information from counsel, but if that's  
13 what it is, we'll see if we can get around it  
14 somehow.

15 MS. WARREN: Well, I mean, if you want to  
16 break --

17 MR. CASTANARES: No. I don't need a break  
18 otherwise unless the witness does.

19 MS. WARREN: All right. Let's just handle  
20 it at the next break.

21 MR. CASTANARES: Okay. That's fine.

22 MS. WARREN: And the court reporter has  
23 marked where the question is so we can find it  
24 if we need to.

25 (Exhibit Number 225 was marked for

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1 Disinterested expert.

2 Q. Who at Oakwood worked most directly with  
3 Andrew Davidson?

4 A. I did.

5 Q. And did he report to you on his work?

6 A. We had -- let's talk about what report  
7 means. I had loads of conversations with Andy, with  
8 people that worked for Andy. We provided them reams  
9 of data, answered zillions of questions about it.  
10 And so to the extent that constitutes reporting, I  
11 heard a lot of reports generally in the forms of  
12 questions and why this, why that.

13 I don't know if Andrew Davidson ever  
14 issued a final written report. I think there were  
15 drafts of numbers that were passed around that maybe  
16 that I looked at. My recollection is that if a draft  
17 report existed, it was intentionally not given to me.

18 Q. Why would it be intentionally not given to  
19 you?

20 A. I may need to talk to my counsel about  
21 whether answering that question violates privilege if  
22 that's okay.

23 MS. WARREN: That's fine.

24 MR. CASTANARES: Do you want us to recess  
25 and do that or do you want to go on to something

1 identification.)

2 Q. (By Ms. Warren) I'm showing you a  
3 document that the court reporter has marked  
4 Defendant's Exhibit 225.

5 MR. CASTANARES: Thanks.

6 Q. (By Ms. Warren) It's a proof of claim  
7 filed by Credit Suisse First Boston in the bankruptcy  
8 case of Oakwood Homes Corporation. And attached as  
9 exhibit A to this proof of claim is the engagement  
10 letter between Oakwood Homes and Credit Suisse for  
11 financial advisory services. And I've just noticed  
12 there is a blank page in between pages three and four  
13 of the letter although it looks otherwise complete.

14 MR. CASTANARES: Should we just tear the  
15 blank page out? My blank page is in a different  
16 place, but it's a blank page, too. Why don't we  
17 just tear the blank page out of it? Why don't  
18 we do that?

19 MS. WARREN: That's fine.

20 MR. CASTANARES: So would you do that with  
21 yours, Mr. Muir? This has also been previously  
22 marked in different numbers in two other  
23 depositions, so we can --

24 MS. WARREN: So we all know what the full  
25 letter looks like.

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MR. CASTANARES: We all know what it is.

Q. (By Ms. Warren) Mr. Muir, did you negotiate -- were you the primary negotiator from the Oakwood side on this letter?

A. I don't think I was the prime negotiator. I saw it in draft. I commented on drafts, but I think Myles was in on it. Bob as well, Suzanne maybe; but I think probably Bob and Myles, particularly Myles.

Q. And you had counsel assisting you in negotiating this agreement?

A. They certainly looked at the drafts.

Q. And who was your counsel at that point?

A. On this, Rayburn Cooper in Durham.

Q. Do you remember any particular negotiation disputes over any parts of this letter? Were there a lot of disputes? Were there a lot of back and forths?

A. I don't remember any particular disputes. There was some back and forth. My recollection, and it was more about trying to define what terms meant than any real back and forth business negotiation as to magnitude of fees or something like that. It's not a model of clarity.

Q. What was your reaction to the fee

to get, you know, into bankruptcy successfully with the minimum amount of pain and suffering, minimum amount of damage to the business, maximum ability to operate the business once we filed.

We needed somebody who knew the ropes, knew the water. The subsets of that involved we needed to have DIP financing squared away so that financing was available going in. We needed to have warehousing financing facility for the finance company going in or that business was going to shut down in short order.

And three, we needed a reasonable plan to run once we got into bankruptcy. Although the company largely could figure out what it wanted to accomplish in terms of a restructuring from a business point of view, but we wanted -- we certainly needed help in putting that to paper to communicate with the constituencies.

And fourth, we knew by the time we signed the letter that we had one entity that was in a blocking position with respect to the case, had a big enough position in the claims that one could not confirm a plan around them. And further, given who they were, you know, we wanted to go into bankruptcy with a plan that they were supportive of. And so I

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structure proposed by Credit Suisse?

A. I thought it was pretty rich.

Q. Did you negotiate to try to make it less rich?

A. I don't remember.

Q. Did you talk to any other financial -- potential financial advisors about whether they could do better in terms of the cost than Credit Suisse?

A. I don't remember having any -- any competitive bids or, again, I think I previously testified I don't remember seeing any pitch books. So while those conversations might have taken place, I don't think I was involved in them.

Q. So when you say you think it was pretty rich, what are you comparing it to?

A. I don't have an objective benchmark, but in -- at the time it seemed like a lot of money for what they were assigned to do.

Q. What was your understanding of what -- strike that. What was your understanding of what Oakwood was assigning Credit Suisse to do in entering into this agreement?

A. I guess my view of the assignment would be probably three or four principal elements. Number one, we needed an effective advisor to advise us how

think those kind of four elements are what I was looking for from CSFB in this project.

Q. Did you put those elements into the engagement letter?

A. Yeah. I haven't read the letter in close to four years. I'd be glad to go back and read it and try and figure it out, but I don't know the answer to that without reviewing the letter.

Q. What you said reminded me of something. Did you attend any meetings with Berkshire Hathaway in 2002?

A. Yes.

Q. Which one or did you attend one or two?

A. Two.

Q. Okay. Tell me about the first one.

A. The first one took place I believe in July and we were invited to Omaha to meet with Mark Millard and Warren Buffett. And we went up there and had a very positive, frank and interesting discussion with Warren Buffett at their offices, at Berkshire Hathaway's offices in Omaha. So we had some company people and we had some CSF people and we had Mark Millard and Warren Buffett.

Q. And who -- did someone make a presentation to Mr. Buffett and Mr. Millard about Oakwood?

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1 A. As I recall we did, the company did.

2 Q. You and Mr. Scandish?

3 A. And Mr. Smith was on that trip as well.

4 Q. And what did you find positive and  
5 encouraging about the meeting?

6 A. I was encouraged that somebody that smart  
7 was interested in the company. I figure only good  
8 things can come out of that. They were very -- they  
9 were very encouraging. They gave us some advice.  
10 They were appreciative of our coming.

11 We went there to deliver them bad news. I  
12 think they were glad that we had come to do that and  
13 were straightforward with them and candid with them  
14 about what the news was.

15 Q. What was the bad news?

16 A. The bad news was that we had decided to  
17 discontinue the LAP program.

18 Q. And how did they react to that?

19 A. They understood it. I think they quickly  
20 understood how it could affect them in terms of their  
21 position in the Lotus bonds, what we've called the  
22 Lotus bonds and the Lotus transaction. And that part  
23 of the meeting probably didn't last more than about  
24 ten minutes, but the comment from Warren Buffett was  
25 something -- I mean, he said, you know, you've done

1 discontinuance might mean to the Lotus transaction

2 because he was the fixed income department at

3 Berkshire. I don't remember.

4 There may have been but I don't remember  
5 any -- there was no new periodic reporting to them of  
6 anything. I think we left them with an understanding  
7 that if going forward there was something that we  
8 were contemplating that might have a material effect  
9 on the transaction, you know, we'd try and give them  
10 a heads up just as we had on this occasion.

11 I remember learning from somewhere that  
12 they really didn't want a tremendous amount of  
13 ex parte communication because it could obviously  
14 impede his ability to trade if he was so inclined to  
15 do so.

16 Q. How did the second meeting come about?

17 A. The second meeting like the first was set  
18 up with a discussion, us to CSFB, CSFB to Berkshire.  
19 And we went out on the second meeting in October of  
20 2002.

21 MS. WARREN: I'm sorry. Would you read  
22 that back so far? I'm not sure if I heard you  
23 right.

24 (The record was read by the reporter.)

25 MS. WARREN: Sorry. Go ahead.

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1 the right thing. We always want to know bad news at  
2 the earliest possible date and good news you can put  
3 on a slow boat is what he told us. And then we spent  
4 another hour talking about other things having to do  
5 with the business, mainly taking questions from  
6 Buffett.

7 Q. What advice did Mr. Buffett and Mr.  
8 Millard give you?

9 A. I don't think Mark had much to say. I  
10 don't remember -- I mean, Warren Buffett never looked  
11 at us and said here's what you guys ought to do.

12 He's keenly bright, asked the most  
13 intelligent questions I've ever seen of anyone, could  
14 distill instantly, asked all the right questions  
15 extremely efficiently, got the answers and, again,  
16 said you did the right thing, glad you came and told  
17 me. I think you're doing the right things to  
18 straighten your business out, good luck to you. And  
19 that transpired over about give or take 90 minutes.

20 Q. What follow-up was there after that  
21 meeting?

22 A. There may have been -- there may have been  
23 some E mail correspondence maybe between me and Mark  
24 Millard because Mark was obviously interested on a  
25 more granular level at what the LAP program

1 THE WITNESS: Went out in October of 2002  
2 to tell Berkshire that we had concluded that it  
3 was in the company's best interests to file for  
4 bankruptcy and to describe what we wanted to  
5 accomplish by the bankruptcy and to solicit his  
6 support for the plan such that when we filed, we  
7 could say we had done so with the largest  
8 creditor. That was the purpose of the meeting.

9 Q. (By Ms. Warren) How did that meeting go?  
10 What was their reaction?

11 A. Gosh, it was a broad ranging discussion.  
12 There were some elements of the plan that we were  
13 contemplating that were nonstarters for Buffett.  
14 There were other parts of it he liked. There were  
15 alternatives that we had considered that he felt we  
16 should give further consideration and we went away  
17 with our to do list if you will.

18 Q. Did he or Mr. Millard express the view  
19 that you should shop the company around before  
20 bankruptcy?

21 A. Yes.

22 Q. What was his basis for saying that as  
23 articulated to you?

24 A. Why he wanted us to shop it?

25 Q. Yeah. What reasons did he give is the

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1 better question?

2 A. Well, I'll tell you what he said. And he  
3 may have said more than this, but this is how he  
4 summed it up. He said -- we walked him through the  
5 book. There was some give and take and he said -- he  
6 said, you know, we like you guys. You know, we trust  
7 you guys.

8 He said we think you're smart guys and  
9 you're the kind of people we'd like to bank and do  
10 business with if you had a good business, but you  
11 don't. And he wanted us to try and sell it, and so  
12 we did.

13 Q. In the situation that the company was in  
14 at that time, did you consider it of primary  
15 importance to try to satisfy Warren Buffett?

16 A. Well, let me try and answer that this way.  
17 We had concluded that there was no alternative but to  
18 file the company for bankruptcy. We thought getting  
19 into bankruptcy is easier if you have all of your  
20 financing lined up.

21 And while you're not doing a prepackaged  
22 or prearranged transaction, to go into bankruptcy and  
23 say we have the support of Berkshire Hathaway, who  
24 owns roughly 40 percent of the claims in this case,  
25 was a very positive thing to be able to say and was a

1 ready to commence due diligence instantaneously on  
2 the filing, at the time we filed, but we certainly  
3 hadn't foreclosed that option. We were willing to do  
4 whatever had the best outcome, you know, for the  
5 constituencies in the case, sell the company, emerge  
6 it stand alone. You know, we were willing to do  
7 whatever the creditors wanted us to do.

8 Q. Did you find Credit Suisse helpful in  
9 arranging these sessions with Berkshire Hathaway and  
10 being one conduit of communication?

11 A. Yeah. I think Jared in particular, you  
12 know, had had a good deal of experience making  
13 presentations to creditors. He told me he had never  
14 made a presentation to Buffett, but yeah.

15 Yeah. I think it was helpful to have  
16 them -- have them along. We had a relationship. We  
17 probably could have called up ourselves, but -- and  
18 maybe could we have done it without them? I don't  
19 know, but were they helpful, sure. They were  
20 helpful.

21 Q. When you say Oakwood had its own  
22 relationship with Berkshire Hathaway independent of  
23 Credit Suisse, how did that come about?

24 A. We didn't have a relationship independent  
25 of Credit Suisse, but at the time -- by the time

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1 very stabilizing. So we felt it was very valuable to  
2 have Warren Buffett's support at least even on an  
3 nonbonding basis. Hey, I see what I see and based on  
4 what I've seen, you know, I'm okay with doing this.  
5 We thought that was very positive.

6 Was it required? No, but I think the  
7 estate benefited ultimately by having not battling  
8 with your primary largest creditor in the midst of  
9 your bankruptcy filing.

10 Q. What was the outcome if you will of  
11 shopping the company around?

12 A. There were not any really attractive bids.  
13 There were indications of interest. No one had time  
14 to do all the due diligence. Some of the buyers --  
15 we looked at strategic buyers and financial buyers.  
16 Some of these had been contacted before.

17 This was not the first time that we had  
18 sent out feelers to sell the company. So while there  
19 were some indications of interest, there was nothing  
20 you could -- nothing in terms of pricing that was any  
21 firmer than Jello, which is to say not very firm.

22 And there was no interest as I recall by  
23 anyone in buying the company outside of a bankruptcy.  
24 They wanted a cleansing process. So by filing we did  
25 not have any interest that I can remember from people

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1 October came around we had -- and again, through the  
2 Lotus transaction which had been brokered by CSFB, I  
3 mean, we knew who Buffett was, Buffett knew who we  
4 were. We had met him face to face.

5 Mark Millard knew exactly who we were. We  
6 had done four transactions with them, so we were well  
7 acquainted with them. They'd have known who we were  
8 if they'd gotten the message. I mean, we had the E  
9 mails.

10 Q. So you felt that you could have dealt  
11 directly with them if you'd wanted to?

12 A. Yeah, but if given that, you know, we  
13 had -- we concluded for a lot of reasons that I  
14 discussed it was wise to have an FA, financial  
15 advisor, to guide us through the bankruptcy process,  
16 it would have been silly not to have used them.

17 Q. Turning back to the engagement letter in  
18 Defendant's Exhibit 225, you'll see that there is an  
19 exhibit B to Defendant's 225 and behind exhibit B  
20 there is an invoice. I would direct to you a page  
21 number, but there isn't one.

22 A. Yes. You're talking about this page?

23 Q. Do you see that? Yes.

24 A. Okay.

25 Q. Do you remember being told that this was

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1 -- that these amounts were what Credit Suisse was  
2 seeking in terms of compensation for the -- for the  
3 restructuring transaction fee and the phase two  
4 restructuring transaction fee?

5 A. That they're seeking in their claim now,  
6 that they were seeking then or --

7 Q. Well, I guess I'm asking you if you have  
8 any recollection of Credit Suisse saying to you oh, X  
9 event or events have happened so now we're entitled  
10 to the phase two restructuring transaction fee?

11 A. The \$2 million?

12 Q. Uh-huh.

13 A. Yeah. I remember a discussion on the day  
14 we filed having to do with paying CSFB \$2 million. I  
15 remember that.

16 Q. And that was with Jared Felt?

17 A. I had a discussion with Jared and I had a  
18 discussion with others at Oakwood.

19 Q. Did you tell Mr. Felt in words or  
20 substance that Credit Suisse intended -- strike that.  
21 Did you tell Mr. Felt in words or substance that  
22 Oakwood intended to pay to Credit Suisse the  
23 approximately \$2 million phase two fee?

24 A. I don't remember it specifically, but I  
25 very well may have.

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1 Q. And to the best of your recollection at  
2 that point did Credit Suisse intend -- did Oakwood  
3 intend to pay to Credit Suisse that \$2 million fee?

4 A. There was a period of time on  
5 November 15th when this discussion took place when I  
6 intended to pay First Boston based upon what I knew  
7 at the time. I certainly wasn't going to do it  
8 entirely on my own. I had a discussion with counsel  
9 about it. I had a discussion with Myles about it.

10 Q. And without asking you any details of the  
11 conversation with counsel, what were the up -- what  
12 was the upshot of those conversations?

13 MR. CASTANARES: Wait a minute, just a  
14 second. Why don't you ask him about the  
15 question -- about the conversations one at a  
16 time so we don't -- you're not asking  
17 implicitly?

18 His conversation with Mr. Standish is not  
19 privileged, but when he's asked about the upshot  
20 of a conversation with counsel, it seems to me  
21 it's very difficult to separate out privileged  
22 communications from that.

23 So just to try to make this neat and to  
24 get you what you're entitled to but without --  
25 without getting off into privileged stuff, could

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1 you break up your question a bit?

2 MS. WARREN: That's fine.

3 MR. CASTANARES. Okay.

4 MS. WARREN: I was just trying to do it  
5 (aster.

6 Q. (By Ms. Warren) Mr. Muir, what was the  
7 substance of your conversation with Mr. Standish  
8 about the phase two fee?

9 A. He told me not to pay them.

10 Q. And did he say why?

11 A. Yes, as I remember.

12 Q. What did he say?

13 A. My recollection is that in a conversation  
14 in Myles' office, this is late in the day on Friday,  
15 November 15th, I went in to touch base with Myles on  
16 this subject. And Myles said no, don't pay them. He  
17 said something to the effect that he had had a  
18 discussion with Jared.

19 And Jared was in our office that day, as  
20 was Piachra, and that -- my recollection is Myles --  
21 Myles told me that he had had a discussion with Jared  
22 and Jared had said in terms of paying them, said  
23 don't pay us anything until we have earned it under  
24 the contract. And so I was a little confused because  
25 I had been in so many words asked by Jared to pay

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1 them \$2 million, and then I'm hearing from Myles that  
2 no, no, no, Myles has spoken to Jared and Jared had  
3 said no, in fact, don't pay us anything until we have  
4 earned it under the terms of the contract.

5 Q. And was anything else said during this  
6 conversation with Mr. Standish?

7 A. Not that I remember because in order to  
8 have it, he was in the midst of a telephone  
9 conference call with a bunch of manufactured housing  
10 dealers. And so it was not a long conversation.

11 It probably lasted less than the time that  
12 it's taken me to tell you about it, but I clearly got  
13 the word from Myles that he had had a discussion with  
14 Jared about the timing of the payment of this fee and  
15 that his understanding of what Jared was looking for  
16 was not the same as mine. And so, not surprisingly  
17 to you, I went with Myles' world view and I did not  
18 send the wire to CSFB.

19 Q. And just very generally what was the  
20 subject matter of your conversation with counsel on  
21 the -- on the issue of paying Credit Suisse? I'm not  
22 looking for any details.

23 MR. CASTANARES: Can he answer that  
24 question without your arguing that my failure to  
25 instruct him otherwise is a waiver? I mean, all

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1 I want to do, all I want you to say is I'm not  
2 opening the door by failing to instruct him not  
3 to answer.

4 MS. WARREN: Well, maybe I can make this a  
5 little easier.

6 MR. CASTANARES: Okay.

7 Q. (By Ms. Warren) Did you consult with your  
8 counsel about the issue of paying Credit Suisse --  
9 let me put it this way. Why did you talk to counsel  
10 about the issue of paying Credit Suisse or not?

11 A. Two reasons. Number one, when Jared first  
12 raised the subject he didn't just come into my office  
13 and say would you wire me \$2 million. It was a very  
14 peculiar conversation in which he came in and he  
15 started talking I want to say in parables, but that's  
16 not the right word.

17 He basically said words to the effect of  
18 very disjointed sentence fragments to the --  
19 something along the lines of gee, you know, there are  
20 times when -- around when people file bankruptcy that  
21 they owe money to somebody or at the time at which  
22 they owe the money the banks have already closed and  
23 they can't pay the money. And I'm -- and sometimes  
24 there are agreements that people ex-crete. And I'm  
25 going you're speaking to me in code.

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1 I said look, Jared, if you've got some  
2 sort of agreement you want me to sign -- he said,  
3 well, yeah, maybe. I said great. Serve it up. You  
4 know, I've got an office building full of lawyers.  
5 You've got an agreement, show it to me and I'll be  
6 glad to have a lawyer look at it. If you want to get  
7 paid two million bucks, at a minimum you're going to  
8 have to give me an invoice because I'm not just going  
9 to wire two million bucks out of here without  
10 something besides just this contract to go with it.

11 So after that discussion Jared went away  
12 and I wasn't sure quite where we were headed. So it  
13 seemed like a good time to go talk to a bankruptcy  
14 lawyer given that at the time this conversation took  
15 place we either had already filed for bankruptcy or  
16 the filing was imminent. So it seemed smart to get  
17 some legal advice.

18 Q. Sitting here today do you have an opinion  
19 about whether or not Credit Suisse earned the \$2  
20 million phase two fee?

21 A. I really don't.

22 Q. Do you have an opinion about any other  
23 money that might be owed to Credit Suisse under the  
24 letter agreement?

25 A. I don't. It's been almost four years

1 since I looked at this contract and November 15 was a  
2 busy day and I just honestly haven't given it any  
3 thought since then.

4 (Exhibit Number 226 was marked for  
5 identification.)

6 Q. (By Ms. Warren) Mr. Muir, I'm showing you  
7 a document that the court reporter has marked as  
8 Defendant's Exhibit 226. It's an E mail chain and in  
9 the chain there appears a forward or an E mail  
10 forwarded from Myles Standish to Fiachra O'Driscoll.  
11 The document is Bates numbered CSFB-35137 to 35142.  
12 And the E mail at the top of the chain is dated  
13 Friday, October 18th, 2002.

14 Would you take a few moments, Mr. Muir,  
15 and read the first three pages of this exhibit? It's  
16 the first three pages and the last three pages are  
17 very similar. Have you ever seen this document  
18 before, Mr. Muir?

19 A. I'm not certain, but I think I saw a draft  
20 of this or maybe this exact document about the time  
21 it was prepared.

22 Q. Did Mr. Standish show it to you?

23 A. Again, I don't remember him doing so, but  
24 I would have been surprised if he were to testify  
25 that he hadn't shown it to me. I think I've seen

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1 this.

2 Q. Did you have a reaction to it at the time?

3 A. Again, I don't remember the circumstances  
4 or even for certain if I did see it. So I don't know  
5 if I had a reaction then. I certainly do now.

6 Q. Reading it now, do you agree with the  
7 substance of it?

8 A. Yes.

9 Q. Do you have any other reactions to it?

10 A. No.

11 Q. Do you know whether, in fact, it was ever  
12 sent --

13 A. No.

14 Q. -- to Lotus?

15 A. I do not know.

16 Q. And I realize you might not remember this  
17 at all, but do you remember having any conversations  
18 with anyone at Credit Suisse about Mr. Standish's  
19 draft letter or the contents of it?

20 A. I do not.

21 Q. I want to go back a minute to underwriting  
22 standards just to make sure that we all understand  
23 what they are and where they came from. I'm sorry.  
24 I know we went through this a little bit before, but  
25 I'll try not to be repetitive. Who at Oakwood set

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1 what Oakwood's underwriting standards would be for  
2 originating loans?

3 MR. CASTANARES: That's been asked and  
4 answered.

5 THE WITNESS: On a day-to-day basis people  
6 on the underwriting side who would report to  
7 Mike Rutherford in the time frame you're  
8 speaking of, you know, if somebody wanted to  
9 change something in terms of anything involving  
10 decisioning, a credit app, you know, small  
11 changes could be made down in the bowels of OAC.  
12 Bigger decisions would go up to Bob Smith.

13 Really important decisions on things like  
14 cut-off scores, I'd be involved in, Myles would  
15 be involved in and we'd all discuss because they  
16 potentially have huge impact. There wasn't one  
17 person who had the yes/no stamp in other words.

18 Q. (By Ms. Warren) Okay. What are FICO  
19 rates?

20 A. FICO scores.

21 Q. I'm sorry. FICO scores.

22 A. FICO is shorthand for Fair Isaac. They're  
23 what I think most people would tell you is the  
24 nation's preeminent designer of credit scoring  
25 systems.

1 applicant or a person.

2 Q. (By Ms. Warren) What factors are  
3 considered in coming up with a FICO score?

4 A. I don't know. You would have to ask Fair  
5 Isaac. Let me complete the rest of the answer. I'm  
6 sorry. I didn't.

7 Q. I'm sorry. I thought you were at a pause.

8 A. I know. I'm sorry. The second kind of  
9 term that people will sometimes use to refer to a  
10 FICO score is a score derived from a custom score  
11 card that Fair Isaac or another similar vendor has  
12 constructed and sold to a particular user. At  
13 Oakwood we had custom FICO cards, custom scoring  
14 systems developed for Oakwood from Oakwood data and  
15 done for us by Fair Isaac.

16 Sometimes we refer to those as the  
17 proprietary score, meaning derived off a proprietary  
18 Oakwood card as compared to the generic score, which  
19 is called the FICO score, sometimes called the Beacon  
20 scores, but they're both basically numerical  
21 representations of applicant creditworthiness, be  
22 they developed generically or for a specific user,  
23 say a particular financial institution.

24 Q. How do you get a FICO score, whether  
25 proprietary or not, for a given individual loan

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1 Q. How do you spell Fair Isaac?

2 A. F-a-i-r. I don't know if there's one R or  
3 two.

4 MR. CASTANARES: There's one.

5 THE WITNESS: Thank you. It's a  
6 California firm. That's --

7 MR. CASTANARES: I thought it was  
8 Connecticut, but okay.

9 THE WITNESS: I-s-a-a-c-s, I think.

10 MR. CASTANARES: I think it's a single  
11 Isaac.

12 THE WITNESS: Counsel knows better than I.  
13 You can Google it. You'll find out. There  
14 are -- and people use the term differently.  
15 There's a couple of possibilities. There is a  
16 -- each of the three major credit bureaus used  
17 to and I assume still do purchase from Fair  
18 Isaac a scoring system that assigns a generic  
19 creditworthiness score to every person in the  
20 data base.

21 Some people call it the bureau score,  
22 referring to short for credit bureau. Some  
23 people call them the FICO scores, but it is a  
24 numerical score that purports to be an overall  
25 representation of the creditworthiness of an

1 applicant?

2 A. Okay. If when you take a loan  
3 application, you retrieve almost always  
4 electronically these days the applicant's credit  
5 bureau file from one or more credit bureaus. Most  
6 every lender will retrieve as well as the raw data in  
7 the file, will also retrieve the bureau score or the  
8 FICO score with the credit file. You pay a little  
9 extra for it, but you can obtain the results of  
10 application of the generic score card to that  
11 customer's data. You can buy that together with the  
12 credit bureau data file itself.

13 In the case of the custom cards that were  
14 used at Oakwood, data from the customer's credit  
15 application was extracted and certain of that data  
16 was used and scored by the score card and then the  
17 score cards electronically through our software would  
18 spit out the credit score derived from the Fair Isaac  
19 score card on the Oakwood custom score card.

20 THE VIDEOGRAPHER: Can we take a break to  
21 change tapes?

22 MS. WARREN: Sure.

23 THE VIDEOGRAPHER: We're off the record at  
24 3:53.

25 (A recess was taken.)

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1 THE VIDEOGRAPHER: Tape number four.  
2 We're on the record at 4:12.  
3 Q. (By Ms. Warren) Mr. Muir, I believe your  
4 counsel said you had something you'd like to correct?  
5 A. Well, or at least amend. You asked me  
6 whether I had any current employment relationships  
7 other than Krispy Kreme, and I don't. You asked me  
8 if my contract with the Trust had terminated and I  
9 told you that it did in June of 2005.  
10 Just so the record is clear, my contract  
11 with the Trust provided for compensation for work  
12 done on behalf of the Trust after the termination of  
13 the contract. Now, to this point I have not sent any  
14 bills for any of that to the trustee, but I have had  
15 a communication with the trustee confirming that the  
16 terms of my contract for post-employment compensation  
17 apply to this deposition and the preparation for it.  
18 Q. Does your post-termination agreement  
19 provide for you to provide any other services or to  
20 assist the Trust in any other way?  
21 A. You know, honestly, I hadn't gone to look  
22 at it. My recollection is it's one of these best  
23 efforts kind of thing, but I don't think I'm  
24 compelled to do anything for the trust, no, is my  
25 best recollection.

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1 Q. Have you been asked to testify at any  
2 trial in this matter if there is a trial?  
3 A. Yes.  
4 Q. And if you are asked, will you appear to  
5 testify?  
6 A. I will.  
7 MR. CASTANARES: If I ask him, anyway. I  
8 don't know if he will if you ask him.  
9 MS. WARREN: Interesting point.  
10 MR. CASTANARES: Interesting point.  
11 MS. WARREN: I'll ask the court reporter  
12 to go back and read the question and answer  
13 where we were when we took the break just so I  
14 know we're picking up in the right place.  
15 (The record was read by the reporter.)  
16 Q. (By Ms. Warren) Was there a certain FICO  
17 score that was a cut-off score for deciding to lend  
18 or not?  
19 A. Through the entire time I was at Oakwood  
20 we had theoretical minimum scores that were required  
21 in order to approve an app. Again, these are all  
22 scores derived off the proprietary Oakwood card and  
23 not the generic card. So there was -- yes, in theory  
24 there's a minimum score. In practice at Oakwood as  
25 with all lenders there's a provision for what's

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1 called low side override where you can approve an  
2 application that fails to meet the minimum score if  
3 certain other conditions are met. Conversely --  
4 well, I think I've answered your question.  
5 Q. During the 1990s was your FICO cut-off  
6 score lowered within the company?  
7 A. In the '90s?  
8 Q. Uh-huh.  
9 A. Was the cut-off score lowered?  
10 Q. Yes. In other words, the threshold under  
11 which you'd have to have an override to approve a  
12 loan?  
13 A. Yeah. It changed from time to time, and  
14 I'm not trying to be evasive. I'm just trying to  
15 characterize it correctly. Initially there was only  
16 one kind of loan offered. There was only essentially  
17 one loan product. And you had one loan product, you  
18 theoretically had one minimum cut-off score.  
19 As time went on lenders got a little bit  
20 more sophisticated or so they thought and they  
21 designed additional loan programs, the eligibility  
22 criteria for which may be different in some respects  
23 than what they would be for the standard loan  
24 program. For example, there were programs run at  
25 Oakwood, lending programs at times that would provide

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1 that instead of the minimum cut-off score being say  
2 210, the minimum score might be 190; but the customer  
3 scoring between 190 and 210 while they might be  
4 accepted in certain circumstances even though they  
5 were below the 210 score, if they were accepted would  
6 be accepted at a rate in a program that required a  
7 higher rate of interest on the loan to compensate  
8 Oakwood for the greater risk of default.  
9 So yes, cut-offs change from time to time.  
10 They sometimes in connection with the introduction of  
11 a new loan program, sometimes because people wanted  
12 to approve more loan applications.  
13 Q. You also mentioned something earlier  
14 called cut-down rates or something like that?  
15 A. Buy-down rates.  
16 Q. Buy-down rates.  
17 A. You asked me about buy-down rates.  
18 Q. Yes. What's a buy-down rate?  
19 A. A buy-down is, for example, a program in  
20 which the customer is offered an interest rate on the  
21 loan, on their loan that is less than the prevailing  
22 rate on a standard loan. In exchange for the lower  
23 rate the customer pays discount points as a  
24 percentage of the loan balance but was not required  
25 to pay those discount points in cash. Rather, they

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were added to the amount financed.

Q. And you don't think this was a good lending practice?

A. No.

Q. Why not?

A. I look at it as a -- as a free option for your relatively less creditworthy borrowers. You're going to offer the customer a lower rate and the amount of points that a customer was required to pay in the entire industry, not just at Oakwood, was mispriced. You failed to charge them enough money to make up the yield differential from the lower rate, so they were -- number one, the product was mispriced.

Number two, it tended to attract relatively lower scoring customers and customers who ultimately defaulted, never paid the points. They got the lower coupon, the lower monthly payment, and they never had to pay the points. If we had required the customer to show up with the points in cash at the closing table, I would have been all for it, but we didn't.

Q. And did the practice of buy-down rates increase during the 1990s?

A. Yes.

of loans that have relatively weaker underlying credit characteristics than you would prefer, once you've originated them is there something you can do about it. And there's not a whole lot you can do about it except attempt to service those assets very, very effectively.

You can on -- similarly, there are other things that affect performance, for example, recession, unemployment, particularly as relates to certain industries that despite the best servicing you will have a significant default problem. And we encountered that a lot at Oakwood when we had a sustained economic downturn affecting the typical mobile home buyer late '90s, early part of this century.

Q. You saw a lot of what?

A. Saw a lot of defaults, including defaults that could not have been normally predicted by the score card.

Q. How does servicing -- or strike that. In what ways can servicing improve the default rate or reduce the risk of default?

A. I think relatively high caliber servicing operations particularly in a subprime type product, which is what mobile home lending generally is, does

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Q. What steps, if any, did management take other than the increased use of the assumptions which we've already talked about to try to compensate for the less stringent or perhaps more lax lending standards in the 1990s?

A. I think if we -- I don't have any statistics on this to share with you, but we clearly spent more money on servicing loans than we did before credit got relatively weaker. If you have weaker obligors, they're going to be delinquent more frequently and they need more intense servicing supervision if you will to minimize your default rate.

At times we charged -- we had risk based pricing if you will and we tended to charge people who had lower scores and, therefore, a greater probability of default, we charge them more money in the form of higher rates. Those are a couple that come to mind.

Q. Is it fair to say that most of the damage done by insufficiently stringent lending standards in the '90s was really not possible to undo in the early 2000s?

A. If by damage you mean what I think you do, and I think you mean once you have originated a group

a good deal more than just call up customers and hound them for the payment. The good operators, and I think we had some good ones at Oakwood, will attempt to help the customer deal with the root cause of the problem.

Customers don't make payments for a lot of reasons, sometimes death, sometimes divorce, job. Really good collectors if they're trained properly and supervised properly if a customer is willing to have a dialogue and wants to keep the house will try and get information from the customer, help the customer figure out what his obligations are and try and figure out ways that you may be able to work with the customer, figuring out what his budget is so that he can ultimately stay in the house if that's what he wants to do so, if that's what he, you know, wants to do.

Some customers just give up and there's not a lot you can do about them other than just repo or foreclose, but there are techniques with good servicing using technology to help you identify early who your problem customers are going to be, automatic dialers, predictive dialers. There's a lot of good technology out there that will help you do a good job. It's expensive, but it's been proven to be

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1 effective.

2 Q. Going back to your meeting with Mr.  
3 Buffett when he said you've got a bad business, did  
4 you agree with him in your own mind?

5 A. I don't think he said we had a bad  
6 business. He said we didn't have a good one. It was  
7 not a pristine, wonderful, well operated historically  
8 business. I mean, there had been a load of mistakes  
9 made in a that company. I mean, Myles had said so in  
10 the exhibit we looked at a few minutes ago.

11 It struck me at first as a little harsh,  
12 but on reflection it was probably a reasonably fair  
13 characterization. I think the assessment, the  
14 difference between the company and Warren Buffett  
15 might have been in the probability and time line for  
16 improving it. And business as it was, Warren Buffett  
17 ultimately bought it.

18 Q. He did. Absent the management mistakes  
19 that you've referred to and we've talked about, do  
20 you think that Oakwood was a good business as of  
21 2002?

22 A. The industry -- you know, I don't know how  
23 you can divorce, you know, some bad business  
24 decisions because they put you in the position you're  
25 in. I don't think management decisions, you know.

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1 were the sole cause of the trouble we ultimately got  
2 into. I think you asked me early in this deposition,  
3 you know, why I thought Oakwood went bankruptcy and I  
4 cited some reasons, and one you've reminded me of  
5 recently is the economy did not help us.

6 We had about the time or on the heels of  
7 some lending practices which at Oakwood and others in  
8 the industry proved to be too lenient, we had a very  
9 difficult time economically in a recession and a  
10 recession that was particularly hard hit or hit very  
11 hard the relatively lower end of the income spectrum.

12 By way of example, in a period of  
13 two-and-a-half years we lost 30,000 textile jobs in  
14 North Carolina. A large number of those people lived  
15 in mobile homes, and no amount of servicing and no  
16 amount of scoring is ever going to predict that. So  
17 there were contributing factors.

18 And so I don't know how to quite say, gee,  
19 if none of that had happened, would we have had a  
20 great business. I don't know quite how to answer it.

21 MR. CASTANARES: If we're at a break in  
22 your train, can we put on the record at this  
23 point that you have decided based upon our  
24 conversation in the hall not to pursue the open  
25 question regarding Andrew Davidson?

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1 MS. WARREN: Yes. That's fine. That's  
2 agreed.

3 MR. CASTANARES: Thank you.

4 (Exhibit Number 227 was marked for  
5 identification.)

6 Q. (By Ms. Warren) Mr. Muir, I'm showing you  
7 a document the court reporter has marked as  
8 Exhibit 227. It's entitled Oakwood Homes Corporation  
9 minutes of the meeting of the board of directors held  
10 Monday, October 28th, 2002. It's Bates numbered  
11 MNAT-6827 and 6828. Do you recognize this document?

12 A. Yes.

13 Q. And are these the minutes of the board  
14 meeting from October 28, 2002?

15 A. They are.

16 Q. I wanted to ask you about something on the  
17 second page of Exhibit 227, the first full paragraph  
18 beginning Mr. Standish next. Would you just read  
19 that briefly?

20 A. Yes.

21 Q. What work was Mr. Standish doing in  
22 conjunction with FTI or not to find prospective DIP  
23 lenders?

24 A. I don't know exactly what Myles is doing  
25 and, again, Bob Smith was principally the person

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1 running the DIP exercise; but among the things as I  
2 recall that FTI worked on were, you know, helping us  
3 size the DIP, how much that DIP credit was needed.

4 That involved doing some financial  
5 projections and we didn't have a huge internal staff  
6 to work on a lot of that. And when -- and that's why  
7 we brought FTI in sometime in 2002 is we were  
8 preparing to file to help us figure some of that out,  
9 but I was not directly involved in the particulars.

10 Q. Do you know which DIP lenders were  
11 contacted by FTI or by other members of management?

12 A. I do not.

13 Q. And remind me. Did you have -- what was  
14 your role with respect to DIP financing?

15 A. I was -- I went to a meeting or two with  
16 Foothill, one of which was in Atlanta I think the  
17 week before we filed, but I basically didn't have a  
18 lot of direct involvement with it.

19 You know, Bob Smith was pretty much  
20 carrying the ball in terms of lining up the DIP  
21 financing whereas I had more of the logistical issues  
22 of trying to get ready to get into bankruptcy,  
23 briefing some important constituencies that needed to  
24 be briefed so they didn't get surprised, banks, other  
25 credit providers and so forth.

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1 Q. So the point person for DIP financing was  
2 Bob Smith?

3 A. In terms of Oakwood people, I think Bob  
4 had more to do with it than anybody else.

5 Q. And was he also supervising Credit Suisse  
6 in efforts to get DIP financing?

7 A. I don't know if Bob was or not or Myles  
8 was. I was not supervising CSFB or at least insofar  
9 as Jared Felt's role was concerned. I had a lot of  
10 discussions with Piachra about what we were going to  
11 do on a post filing basis, but not on the DIP and not  
12 on the Berkshire side of it.

13 Q. So that was more Bob and Myles?

14 A. It wasn't me.

15 (Exhibit Number 228 was marked for  
16 identification.)

17 Q. (By Ms. Warren) I'm showing you a  
18 document that the court reporter has marked  
19 Defendant's Exhibit 228 titled Oakwood Homes  
20 Corporation minutes of the meeting of the board of  
21 directors held Monday, November 4th, 2002. It's  
22 Bates numbered OHCLT-2761 and 2762. Do you recognize  
23 this document, Mr. Muir?

24 A. I don't. I just note that I was not the  
25 secretary at this meeting, but I may have seen this

1 the various parts of CSFB to get continued access to  
2 the -- to the loan purchase facility?

3 A. Yeah. I don't remember that there were  
4 any negotiations. My recollection is that I didn't  
5 have any sense that there were really any issues  
6 around getting the warehousing facility reopened post  
7 bankruptcy until those that developed right at the  
8 time that we filed.

9 Q. And what issues developed around the time  
10 that you filed?

11 A. A demand for a sizable fee for one thing.

12 Q. Were you surprised to be asked for a fee  
13 to continue the warehouse -- the loan purchase  
14 facility?

15 A. I was.

16 Q. Why?

17 A. A couple of reasons. Number one, the  
18 warehousing facility was extremely well structured in  
19 2001 and it was the most elaborate structure of its  
20 kind I had seen in terms of providing protection to  
21 lenders. It was well structured from a credit  
22 enhancement point of view such that the credit  
23 quality of Oakwood should have been largely  
24 irrelevant. It was intended to be and structured  
25 that way.

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1 document before and probably did.

2 Q. Do you remember if you were present at  
3 this meeting?

4 A. I don't remember and would just note that  
5 the minutes don't seem to indicate that I was. I  
6 don't know where I was that day.

7 Q. Well, why don't you read through it  
8 because I just -- I really want to just get your  
9 sense of whether what's described here comports with  
10 your recollection of what the state of play was at  
11 the time.

12 A. In reading this I don't see anything in  
13 here that strikes me as inconsistent with my  
14 recollection.

15 Q. Thank you. Looking at the first page of  
16 Defendant's Exhibit 228, there's a reference towards  
17 the bottom of the page in that last paragraph about  
18 discussions with CSFB regarding continued access to  
19 the warehouse loan purchase facility. Do you see  
20 that?

21 A. I do.

22 Q. What were the state of discussions with  
23 CSFB at this point, if you remember?

24 A. Yeah. I don't remember what they were.

25 Q. Were you involved in the negotiations with

1 So from a risk point of view I didn't see  
2 that this bankruptcy had any risk to speak of  
3 incrementally to the lender. And second, I was  
4 surprised that if a fee was going to be demanded, I  
5 was surprised they didn't tell me about it  
6 substantially before they did. It just surprised me  
7 to be hit with it at the end.

8 Q. At this point were you making efforts to  
9 talk to any other potential providers of a loan  
10 purchase facility?

11 A. No.

12 Q. Did you have any information against which  
13 you could compare the size of the fee that Credit  
14 Suisse was asking about or asking for and determine  
15 whether it was a fee that you thought was reasonable  
16 or not or according to industry standards or not?

17 A. No. I had no benchmarks.

18 Q. What is your understanding of how the --  
19 how the issue got resolved?

20 A. Ultimately we effectively agreed to a  
21 higher -- to pay them a fee. The original proposal  
22 was the company would pay them a fee up front upon  
23 the reopening of the facility. That ultimately  
24 didn't turn out to be the deal, but there was  
25 negotiated an amended fee letter which provided for

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1 an increase in the monthly fees of some amount that  
2 totaled up at the end of the day as I recall to be  
3 very similar in magnitude to the front end fee that  
4 had been requested but albeit payable over time  
5 instead of up front.

6 Q. So the proposal from Credit Suisse  
7 initially was pay us all this money up front and the  
8 company pushed back and it was changed into a monthly  
9 payment?

10 MR. CASTANARES: Objection to form.

11 THE WITNESS: My recollection is that CSFB  
12 wanted an up front fee. That surprised us. If  
13 there was pushing back if you will or an  
14 expression of discomfort with that plan. I think  
15 it came as much from Berkshire Hathaway as it  
16 did from the company because we clearly  
17 discussed it with Berkshire and got their view  
18 on it.

19 Q. (By Ms. Warren) Do you remember -- and  
20 you might not since I understand you weren't the  
21 point person on this, but do you remember how the  
22 efforts to put together DIP financing were finally  
23 resolved?

24 A. I can tell you about the DIP financing  
25 that ultimately got put together. You know, I'm not

So we felt like Berkshire was okay with  
this and they were the largest creditor. There was  
some unhappiness at the official committee of  
unsecured creditors with certain of the terms that  
were included in the proposed DIP financing and that  
the committee found objectionable.

And so considerable discussion and debate  
about DIP providers and the conditions under which  
DIP credit would be granted ensued among the  
potential DIP providers, the committee, the company  
and Berkshire.

Ultimately I think in late December or  
early January there was a meeting of the minds and we  
ultimately proceeded with the DIP proposal from the  
people that showed up the day after bankruptcy, that  
is, the Ranch Capital, Greenwich Capital, Berkshire  
consortium, and we ultimately concluded that  
transaction. In the meantime while all that was  
being negotiated, we had an interim DIP facility from  
Foothill.

Q. Is it fair to say that FTI provided  
Oakwood with substantial assistance in putting  
together the DIP financing?

A. In terms of what happened after Greenwich  
and Ranch showed up in the door, I don't recall them

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1 sure I remember a lot about the specifics of how we  
2 got to it, but I know where we ultimately got to if  
3 that's helpful. I'm not sure that's the question  
4 you're asking, though.

5 Q. Well, tell me what you remember about the  
6 structure that was put together or the facility that  
7 was put together?

8 A. And how we got to it?

9 Q. Yes.

10 A. Okay. As best I recall we found out on  
11 the 13th or the 14th of November that Foothill was  
12 not willing to provide any DIP financing other than  
13 into a liquidating 11. They were not willing to do a  
14 DIP to reorganize the business. At that point FTI  
15 got on the telephone in a big way and started calling  
16 people they knew.

17 And by the day before we filed, the day we  
18 filed, certainly by the weekend after we filed, the  
19 16th, the day after, some representatives of two  
20 firms were in our office expressly to talk about DIP  
21 financing. And we had very good conversations with  
22 them, with those parties, and proceeded to negotiate  
23 with them over a DIP. They disclosed to us up front  
24 that Berkshire Hathaway was in essence part of their  
25 consortium to do the transaction.

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1 having a whole lot to do with it. At that point it  
2 was the company and Greenwich and Ranch.

3 Q. Right, but before that?

4 A. Again, I had -- had limited visibility to  
5 what was going on in the preparation for the DIP. I  
6 knew again that FTI worked on helping Suzanne and Bob  
7 and principally Bob I think do some financial  
8 projections trying to size the DIP; but in terms of  
9 who they may have contacted, the extent of any  
10 contact they may have had with potential lenders, I  
11 did not recall that FTI had been involved in that at  
12 all other than in terms of contacting lenders, but I  
13 knew they had been involved in preparatory work.

And they were not involved at all that I  
can remember, at least not in any material way, in  
the negotiation with Greenwich and Ranch. They did  
bring them to the table, however.

18 MS. WARREN: Excuse me.

19 (Discussion off the record.)

20 Q. (By Ms. Warren) Did anyone from Credit  
21 Suisse tell you in words or substance before the  
22 bankruptcy filing that Credit Suisse would waive any  
23 event of default in the credit facility?

24 A. I don't recall anybody saying that.

25 Q. Did you expect that there would need to be

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1 some negotiation over a waiver?

2 A. I knew that we were going to have to  
3 document something with the warehouse lender because  
4 the transaction by its terms terminated with the  
5 bankruptcy filing. So I knew there was going to be  
6 an amendment, a redo or something, but I expected it  
7 to be in essence ministerial in nature.

8 Q. Mr. Muir, did Credit Suisse ever try to  
9 tell management what to do in terms of operating the  
10 company?

11 A. Not that I can remember. That's not to  
12 say they wouldn't weigh in with an opinion when asked  
13 and on a number of matters they were asked fairly  
14 frequently; but did they ever attempt to direct us,  
15 no.

16 Q. Did Credit Suisse ever dictate or try to  
17 dictate changes in key officers or directors?

18 A. Not that I know of.

19 Q. Did Credit Suisse try to weigh in on your  
20 day-to-day management decisions?

21 A. Let me answer that this way. It was not  
22 unusual and, in fact, it was practice for me anytime  
23 we made any substantive business decision that might  
24 have a material impact or even a less than material  
25 but significant impact on anything having to do with

1 we did that CSFB, meaning Fiachra, thought were not  
2 so good. And I thought highly of Fiachra's opinion  
3 and if Fiachra thought we were making a mistake in  
4 something, I certainly conveyed that back. And we  
5 valued and trusted him and valued his judgment.

6 Q. So is it fair to say that sometimes Credit  
7 Suisse agreed with what you were doing and sometimes  
8 Credit Suisse didn't, but management did what it  
9 thought was best?

10 A. I think in retrospect and even at the time  
11 CSFB would tell you we did some things that we told  
12 them we were doing that they didn't think were very  
13 smart and some things that conversely they thought  
14 probably were smart.

15 Q. Do you think Credit Suisse tried to serve  
16 Oakwood to the best of its professional ability?

17 A. I don't know quite how to -- how to answer  
18 that other than to answer it this way. I had a  
19 tremendous amount of experience over the years  
20 dealing with Fiachra O'Driscoll and his team. They  
21 worked extremely hard on our behalf, did a lot of  
22 wonderful things.

23 From time to time with their assistance we  
24 avoided making some business mistakes. And so did  
25 they -- did they try? Based on observations I saw a

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1 loan originations, the ABS program, loan servicing,  
2 it was my practice always to inform CSFB of what we  
3 were doing and why we were doing it and solicit  
4 feedback. So to the extent that's weighing in, yeah,  
5 they sure did. They were asked to weigh in.

6 Q. But you were asking Credit Suisse to weigh  
7 in on matters that might affect the fate of  
8 securitizations on the market; right?

9 A. That might -- things that might affect the  
10 performance of securitizations that had already been  
11 done, things that might have the ability -- an effect  
12 on our ability to do securitizations in the future.

13 Things that might have had an effect on if  
14 not whether or not a future transaction would get  
15 done but the terms on which it would get done,  
16 marketplace reception to securities that had certain  
17 loans in them, rating agency views on underwriting  
18 decisions, all of those kinds of things were  
19 routinely discussed.

20 Q. And did you always do whatever Credit  
21 Suisse told you to do when you consulted with them?

22 A. I don't ever recall being told to do  
23 anything by CSFB. There were decisions that were  
24 made that CSFB and I think thought were good  
25 decisions and said so. And I think there are things

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1 lot of trying over a lot of years, and more  
2 particularly I saw a lot of results. And I'm much  
3 more interested in results than how hard somebody  
4 tries. I had a much more limited opportunity to  
5 observe that in the financial advisory role, but I  
6 saw a lot less in terms of results than I expected to  
7 see.

8 Q. Did you think that the folks providing  
9 financial advisory services were doing what they  
10 thought was their best even if you weren't getting  
11 the results that you might have liked?

12 A. You know, it's hard for me to assess what  
13 they thought. I think maybe you'd have to ask them.

14 Q. Well, but I'm asking you what you  
15 perceived. Did you think that the financial advisory  
16 folks were working hard?

17 A. Often, no. I didn't.

18 Q. And was this because you weren't getting  
19 -- some things weren't accomplished that you thought  
20 should have been accomplished?

21 A. In part, but more particularly I never  
22 felt Jared felt had a sense of urgency. We had I  
23 don't know how many discussions and it was a source  
24 of frustration for me that I think I earlier  
25 testified there was not an unlimited amount of time

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1 to accomplish what needed to be accomplished. And I  
 2 shared with CSPB very early in the game what that  
 3 time period was. And I was frustrated routinely that  
 4 I don't -- by what I perceived at least as Jared's  
 5 failure completely to grasp the fact that we were  
 6 going to be compelled to file on a date certain  
 7 whether we were ready to or not.

8 I had an impression that his view was that  
 9 we will file when we get Berkshire on board and it's  
 10 just unthinkable to file before then. And I was  
 11 frustrated that he seemed unwilling and unable to  
 12 come to grips that filing was inevitable at a date  
 13 certain. And that's what by I mean at least in my  
 14 perception as, you know, a lack of focus and a lack  
 15 of sense of urgency.

16 Q. Did you convey your feelings on that topic  
 17 to anyone at CS?

18 A. I conveyed them to Fiachra on a -- and to  
 19 Jared on a number of occasions. The most vivid was  
 20 on the way back from the second trip to Omaha.  
 21 Fiachra assured me that they understood the  
 22 situation. I was still not convinced that Jared  
 23 understood the situation.

24 Q. Leaving aside the financial advisory work,  
 25 which I understand did not accomplish everything you

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1 would have liked, did you have any issues with the  
 2 other services provided by Credit Suisse during the  
 3 period 1999 to the petition date?

4 A. No, not at all.

5 Q. Do you think the people at Credit Suisse  
 6 were honest with you?

7 A. I had no reason to think that anybody from  
 8 CSPB ever lied to me.

9 Q. Did you in words or substance ever tell  
 10 anyone at Credit Suisse that you thought Credit  
 11 Suisse had done a good job in a very difficult  
 12 situation in getting through the bankruptcy filing  
 13 during that whole period, pre and post bankruptcy?

14 A. I don't recall doing so, but I may have.  
 15 We were just glad to be done. It was a -- it was a  
 16 wrenching process and I know when we finally got into  
 17 bankruptcy I was glad to have arrived there, painful  
 18 though it may have been. And I -- and again, while I  
 19 wasn't totally satisfied with all aspects of that  
 20 engagement by CSPB, they helped us get there and it  
 21 was difficult.

22 MS. WARREN: Let's take a break for a  
 23 minute.

24 THE VIDEOGRAPHER: We're off the record at  
 25 5:04.

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(Deposition adjourned at 5:04 p.m.)

\* \* \* \* \*

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1 STATE OF NORTH CAROLINA C E R T I F I C A T E  
 2 COUNTY OF GUILFORD

3 I, K. Denise Neal, RPR, Registered  
 4 Professional Reporter and Notary Public, do hereby  
 5 certify that DOUGLAS R. MUIR, VOLUME 1 was duly sworn  
 6 by me prior to the taking of the Deposition; that  
 7 said Deposition was taken and transcribed under my  
 8 supervision; and that the foregoing 200 pages are a  
 9 true and accurate transcription of the testimony of  
 10 the said deponent.

11 I further certify that review and signing  
 12 of the transcript by the witness was reserved.

13 I further certify that the persons were  
 14 present as stated.

15 I further certify that I am not related  
 16 to, of counsel for or in the employment of any of the  
 17 parties to this action.

18 IN WITNESS WHEREOF, I have hereunto  
 19 subscribed my name, this the 3rd day of October,  
 20 2006.

21 K. Denise Neal, RPR  
 22 Registered Professional Reporter  
 23 and Notary Public  
 24 My Commission Expires  
 25 June 23, 2010.

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DEPOSITION OF DOUGLAS P. MUIR, VOLUME I/KDH

I do hereby certify that I have read all questions propounded to me and all answers given by me on the 26th day of September, 2006, taken before K Denise Neal, and that:

1) There are no changes noted.

2) The following changes are noted:

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure, which reads in part: Any changes in form or substance which you desire to make shall be entered upon the deposition...with a statement of the reasons given...for making them. Accordingly, to assist you in effecting corrections, please use the form below:

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If supplemental or additional pages are necessary, please furnish same in typewriting annexed to this deposition.

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**In The Matter Of:**

*In re: OAKWOOD HOMES CORPORATION/OHC LIQUIDATION v.  
CREDIT SUISSE FIRST BOSTON, et al.*

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**DOUGLAS R. MUIR**

*September 27, 2006*

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**MUIR, DOUGLAS R. - Vol. 2**





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27/09/2006, MUIR, Douglas R. (vol. 2)

Continuation of the Videotape Deposition of  
DOUGLAS R. MUIR, Volume II, taken by the Defendants,  
at the Marriott Hotel, 425 North Cherry Street,  
Wilmington, North Carolina, on the 27th day of  
September, 2006 at 9:00 a.m., before K. Denise Neal,  
Registered Professional Reporter and Notary Public.

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\*\*\*\*\*

1 THE VIDEOGRAPHER: We're on the record at  
2 9:00 o'clock. This is tape number five.  
3 DOUGLAS R. MUIR,  
4 having been previously sworn, was further examined  
5 and testified as follows:  
6 FURTHER EXAMINATION  
7 BY MS. WARREN:  
8 Q. Good morning, Mr. Muir.  
9 A. Good morning.  
10 Q. One of the financing facilities used by  
11 Oakwood that we didn't talk much about yesterday was  
12 the revolver. Would you tell me generally why did  
13 Oakwood need a revolving credit facility?  
14 A. The facility was initially put in place to  
15 finance the expansion of the business, principally  
16 construction of factories and construction and  
17 inventory at new sales centers. And at the time bank  
18 credit seemed on a three-year deal, it was a  
19 three-year duration deals, you know, seemed a cost  
20 effective way to finance that.  
21 Q. Do you remember when the revolver was  
22 first put into place?  
23 A. It was approximately 1997. I could be off  
24 more likely a year earlier than that than a year  
25 later, but sometime in the '96, '97 time frame.

3

5

Q. And who was the provider of that facility?

A. There were five banks participating.

First Union was the largest investor and syndication agent. The other banks in the deal were Bank of America, PNC, National City and First Chicago.

Q. Now did Oakwood choose those particular providers?

A. As follows: Prior to the creation of the Bank America -- Bank of America warehousing facility that we discussed yesterday, we had preceding that facility a warehousing facility that was provided by the five banks I just mentioned. At some time around 1996 or '97 Bank of America approached us and said gee, we have a more cost effective way for you to finance your warehouse borrowings and using our commercial paper conduit and it will save you some money. So we said gee, sounds great to us.

And so we terminated the bank warehousing facility and converted that warehousing facility or really replaced it with a new conduit facility sponsored by Bank of America.

What we didn't want to lose in the process of doing that was the relationships we had built up with the other banks. And so we went to Wachovia or again at the time First Union and we said gee, we'd

obtaining replacement credit facilities to take out the banks.

Q. Do you know if consideration was given to using Credit Suisse for the revolving facility?

A. I have a vague recollection that we -- there were discussions during the '99 to '02 time frame about our desire for Credit Swiss to come up with some credit. Whether we had a discussion with them about a pure revolving facility, secured or unsecured, I just don't remember.

Q. And this is when you let Credit Suisse know that there was competition and you wanted them to step up?

A. I can't remember when that discussion took place, but it -- I definitely did have that discussion with Fiachra about the pressure we were receiving from credit providers who were providing credit and not sharing in what they would view to be their fair share of the underwriting fee income.

MS. WARREN: Denise, are we on 229?

THE COURT REPORTER: Yes.

(Exhibit Number 229 was marked for identification.)

Q. (By Ms. Warren) I'm showing you a document the court reporter has marked as Defendant's

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like to keep our bank group together because they've been with us, they know us. Would you go out and syndicate a revolving credit facility for us that each of those five banks could participate in so that we would retain our relationship with those banks.

Q. And did there come a time where you changed your service provider on the revolver to another bank?

A. No. Well, let me -- I'm sorry. By its terms that First Union revolving credit facility expired three years after it was set up and was ultimately retired in January of 2002 with the Foothill facility just so the record is clear.

Q. Why did Oakwood change the provider to Foothill after the original facility expired?

A. The banks didn't want to renew the credit. The banks had extended the maturity of the credit beyond its initial three years and they wanted out of the credit. They wanted us to find a new lender.

Q. How did management come to choose Foothill?

A. I don't know exactly. I was not really involved in seeking alternative financing.

Q. Who was involved with that?

A. Bob Smith principally drove the train on

Exhibit 229, minutes of the meeting of the board of directors held Wednesday, November 15th, 2000. And I see you are noted as being the secretary for this meeting. Take a look at the second page of Exhibit 229, which by the way, the Bates numbers are NNAT-6717 to 6718.

On the second page, 6718, there's a report on -- in the third paragraph there's a report on efforts to secure the revolving facility. Do you see that?

A. I do.

Q. At this point was the revolving facility close to a done deal, do you remember?

A. Meaning the Foothill facility?

Q. Yes.

A. You know, I don't remember. I think we ultimately closed the Foothill deal in January of '01. I think I'm right about that. You know, how fully baked that deal was on November 15th, I just don't remember.

Q. Looking further down the same paragraph, there's a notation that Mr. Muir gave a report on the status of efforts to monetize some or all of the corporation's inventory of subordinated asset backed securities. Do you see that?

7

9

1 A. I do.

2 Q. What's that refer to?

3 A. I don't recall specifically. There were a  
4 couple of things that we were working on in this time  
5 frame or ideas that we were contemplating that I  
6 might have been referring to, but I'd be glad to tell  
7 you what they were but I can't definitely connect the  
8 dots to specific things to these words on this piece  
9 of paper.

10 Q. Do you remember whether this was an idea  
11 of management to help improve liquidity?

12 A. We were -- I don't see the words improve  
13 liquidity in the language here, but clearly at the  
14 time we were accumulating an inventory of  
15 subordinated REMIC certificates and we would have  
16 felt it was in our best interests to convert those to  
17 cash if we could on a reasonable basis and we  
18 certainly would have been seeking to do so.

19 Q. Do you know if Credit Suisse had any role  
20 in this planned or contemplated is perhaps a better  
21 word effort to monetize the corporation's REMIC  
22 inventory?

23 A. You know, I don't remember specifically  
24 the discussions that I was referring to in this  
25 report to the board. The most likely candidate is

1 Q. (By Ms. Warren) I'm showing you a

2 document the court reporter has marked Exhibit 230  
3 Bates numbered MNAT-6712 to 6716. It's entitled  
4 Oakwood Homes Corporation minutes of the meeting of  
5 the board of directors held Wednesday, December 20th,  
6 2000, and I note that Mr. Muir is listed as secretary  
7 of the meeting.

8 Mr. Muir, if you look through the bottom  
9 of the first page of Exhibit 230 and the following  
10 pages, it shows the board approving the Foothill  
11 Capital revolving credit facility and the CSFB loan  
12 purchase facility. Do you see that?

13 A. Yeah. I see resolutions on both of those,  
14 yes.

15 Q. Was entering into these facilities a  
16 proposal of management to the board?

17 A. I think that's a fair characterization,  
18 yes.

19 Q. And the board approved both facilities?

20 A. They did.

21 Q. Why was it important for the board to  
22 approve entering into both of those facilities?

23 A. My recollection is that proof of corporate  
24 authority was a condition of the lender. And so in  
25 order to document the trail of corporate authority,

10

12

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1 would have been speaking to about how to monetize the  
2 B2s, you know, would have been Credit Suisse. At  
3 some point in the time frame '99 to 2002 that we've  
4 been discussing I recall that as best I can remember  
5 that I discussed with Piachra the possibility of CSFB  
6 doing some sort of repo deal on the B2s.

7 Now, that never ultimately happened, but I  
8 know he and I discussed it at least conceptually.  
9 That would have been one way to at least in the short  
10 term have monetized the B2s, albeit on a temporary  
11 basis.

12 Q. Why did the repo deal not happen?

13 A. I don't remember. It was discussed but,  
14 you know, it never matured to the point where Piachra  
15 came to me and said here is a term sheet that's been  
16 signed off on by Credit. Whether he ever said gee,  
17 Credit won't do it or it just kind of faded away, I  
18 just don't recall.

19 MS. WARREN: Let me have that back for a  
20 minute. I need to correct what I said earlier  
21 about this exhibit. Exhibit 229 is Bates  
22 numbered 6717 to 6722. I had an unstapled copy,  
23 but that's all I'm going to ask you about.

24 (Exhibit Number 230 was marked for  
25 identification.)

1 we went to the board and memorialized in these  
2 resolutions the board's approval of the transactions.

3 Q. And during the meeting when you asked for  
4 the board to approve these facilities, was there a  
5 discussion of the pros and cons?

6 A. Well, I'm just reading from the minutes on  
7 page one in the paragraph immediately preceding the  
8 beginning of the resolution with regard to the  
9 Foothill facility. It says a discussion of both  
10 transactions followed, at the conclusion of which the  
11 following preambles and resolutions were unanimously  
12 adopted. So I assume from this there was a  
13 discussion. I don't remember what the discussion  
14 was.

15 Q. You don't have any independent  
16 recollection of the discussion?

17 A. I don't.

18 (Exhibit Number 231 was marked for  
19 identification.)

20 Q. (By Ms. Warren) I'm showing you a  
21 document the court reporter has been marked -- that  
22 the court reporter has marked Exhibit 231. It's  
23 entitled Oakwood Homes Corporation minutes of the  
24 meeting of the board of directors held Friday, June  
25 20th, 2001.

11

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1 It's Bates numbered KCLH-1172 to 1174, and  
 2 I note that Mr. Muir is listed as secretary of the  
 3 meeting. Looking at the last page of Exhibit 231, at  
 4 the top of the page there's a mention of a report  
 5 from Mr. Smith on the current status of discussions  
 6 with Foothill regarding a potential revolving credit  
 7 facility and Mr. Muir's work on it. Well, let's take  
 8 it one at a time.

9 First of all, since the revolving credit  
 10 facility with Foothill had been or a revolving credit  
 11 facility with Foothill was approved by the board in  
 12 December of 2000 as we just saw, what was going on in  
 13 terms of discussions with Foothill on June 8th, on or  
 14 around June 8th, 2001?

15 A. There was -- there was a delay, an  
 16 extended delay between the time we went to the board  
 17 to approve both the Foothill transaction and the CSFB  
 18 transaction and the time those transactions closed.  
 19 CSFB closed within a month or so. There was  
 20 something up with Foothill that caused it to be  
 21 delayed really by a year. And for the life of me  
 22 today I don't remember what the issue was, but there  
 23 was one.

24 Q. And did that cause you some irritation?

25 A. Again, at the time I wasn't really -- I

1 while the banks didn't cut us off, the banks worked  
 2 very steadily to reduce their exposure to the credit.

3 Q. And did they raise your fees as well?

4 A. I don't think -- we could go back and look  
 5 at the documents, but I don't think that they did.  
 6 They periodically did charge us some fees for  
 7 amendments, but as I recall I don't have a memory of  
 8 any kind of imposition of any kind of monthly fees  
 9 because there were none in the agreement to begin  
 10 with.

11 They -- we simply paid them a rate of  
 12 interest on their outstanding borrowings and maybe an  
 13 unused fee on the unused commitments, but I don't  
 14 remember anything -- that there were any monthly fees  
 15 of any kind for them to have increased.

16 Q. Did the First Union bank group charge you  
 17 for waivers?

18 A. From time to time they charged us either  
 19 for waivers or amendments. Sometimes we got  
 20 amendments to avoid defaults so we didn't need a  
 21 waiver. We paid them some fees over the term of the  
 22 agreement. How much and when, I just don't remember.

23 Q. When the deal was finally done with  
 24 Foothill, were they charging higher fees than the  
 25 First Union bank group had done?

14

16

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1 was trying to make sure the servicing of the advance  
 2 facility got done, the CSFB deal was working. I  
 3 wasn't focusing on the revolving credit. Bob was  
 4 dealing with it. So when you're not focusing on it  
 5 day-to-day, I really didn't think about it.

6 Q. What was done in the interim during this  
 7 delay period to make sure that you still had access  
 8 to the credit line?

9 A. We spent a lot of time talking to First  
 10 Union. Again, the banks wanted out of the credit.  
 11 If we went back and looked at the record from say  
 12 about the time we first lost our investment credit  
 13 rating to the point at which the Wachovia syndicated  
 14 facility was retired, you'll see a moving picture if  
 15 you will that shows a company with deteriorating  
 16 credit profile, periodic defaults under the credit  
 17 facility.

18 And the reactions to that in the history  
 19 of amendments to that facility over time is what you  
 20 see as lenders charging more money in terms of fees  
 21 and reducing the credit availability under the  
 22 facility. That's what banks do when they want out of  
 23 a facility but they don't want to just cut you off  
 24 because of potential flack to them for doing so. And  
 25 that's what you see in the Wachovia facility. So

1 A. I don't remember what the amount of any  
 2 front end commitment fee paid to Foothill was if  
 3 there, in fact, was one or what the rate of interest  
 4 was compared to Wachovia. You know, we have the  
 5 documents and we could research it, but off the top  
 6 of my head I don't remember.

7 Q. Going back to the third page of  
 8 Exhibit 231, there's the reference at the top of the  
 9 page to Mr. Muir's work on a new credit facility  
 10 secured by servicing advances. Do you see that?

11 A. I do.

12 Q. And what does that refer to?

13 A. This refers to what ultimately wound up  
 14 being the servicing advance facility that we closed  
 15 in October in which Prudential was the investor.

16 Q. Looking back at the same page in the next  
 17 paragraph, there's a reference to a report from Mr.  
 18 Smith on the assumptions program that we talked about  
 19 yesterday. Do you see that?

20 A. I've read it, but I've lost track of the  
 21 question. Could you ask the reporter to read it  
 22 back, please?

23 Q. The question was just do you see the  
 24 reference to Mr. Smith reporting on the assumption  
 25 program?

15

17

1 A. I do.  
2 Q. Do you remember if this was the first time  
3 the board had been apprised of the increased use of  
4 the assumption program?  
5 A. I don't remember specifically, but I doubt  
6 it.  
7 Q. Why do you doubt it?  
8 A. Because I can remember -- I attend  
9 virtually all of the board meetings and a topic that  
10 was often discussed was the level of incoming repo  
11 properties, how to go about effectively and  
12 efficiently disposing of them.  
13 And I know from time to time the loan  
14 assumption program came up for discussion as one of  
15 the things that we were doing trying to deal with  
16 that issue, but I don't have a recollection of  
17 exactly when but it was more than once.  
18 (Exhibit Number 232 was marked for  
19 identification.)  
20 Q. (By Ms. Warren) I'm showing you a  
21 document that the court reporter has marked as  
22 Exhibit 232. It's entitled Oakwood Homes Corporation  
23 minutes of the meeting of the board of directors held  
24 Tuesday, July 24th, 2001. It's Bates numbered  
25 KOLH-1176 to 1181 and I note that Mr. Muir is listed

1 rings a bell, but I do know, for example, what states  
2 we were talking about when Myles was reporting about  
3 states being particularly problematic from a  
4 litigation point of view. I know exactly what  
5 regions we were talking about exiting for that very  
6 reason, but this doesn't help me remember the  
7 particulars of what Myles was talking about in these  
8 particular reports.  
9 Q. Do you remember whose idea this plan was  
10 to reduce the operations in certain states?  
11 A. That would be Myles.  
12 Q. Looking back at Exhibit 232, there's a  
13 reference on the first page of Exhibit 232 to Mr.  
14 Smith giving copies of presentation materials  
15 regarding the plan during a management meeting with  
16 the corporation's bank group. Do you see that?  
17 A. I don't just yet, but I'm looking.  
18 Q. It's in the second paragraph from the  
19 bottom.  
20 A. Yes. I see it.  
21 Q. Were you present at that management  
22 meeting with the corporation's bank group?  
23 A. I probably was, but I have no specific  
24 recollection of it.  
25 Q. Is it fair to say that you were usually

18

20

1 as secretary of the meeting. Looking at the first  
2 page of Exhibit 232, the second paragraph from the  
3 bottom references a report from Mr. Standish on the  
4 plan discussed at the last board meeting to  
5 substantially reduce the size of the retail  
6 organization. Do you see that reference?  
7 A. I do.  
8 Q. We can certainly look back at the last  
9 board meeting minutes if that would help you, but do  
10 you remember generally what that plan involved?  
11 A. I do not.  
12 Q. Do you know why the plan to substantially  
13 reduce the size of the retail organization was  
14 contemplated?  
15 A. Again, without referring back to a more  
16 detailed report of which plan this was, I don't  
17 remember.  
18 Q. Take a look back at Exhibit 231. On the  
19 second page of Exhibit 231 in the center of the page  
20 there's a reference to Mr. Standish's leading a  
21 discussion about the company's retail and  
22 manufacturing operations. Why don't you look at that  
23 paragraph and see if it refreshes your memory and let  
24 me know when you're finished?  
25 A. This language on page two of Exhibit 231

1 present when management met with the corporation's  
2 bank group?  
3 A. Yes, usually.  
4 Q. During the 2000 to 2002 period do you  
5 remember approximately how often management would  
6 meet with the corporation's bank group?  
7 A. We met with the bank group from time to  
8 time let me say, and the extent to which we did so  
9 varied. There were a handful of meetings usually  
10 held in Charlotte which representatives of all of the  
11 banks in the group attended.  
12 Q. And this was still at the stage where you  
13 were dealing with the five banks?  
14 A. Yes.  
15 Q. Five banks we talked about earlier?  
16 A. In the syndicated Wachovia facility. So  
17 periodically there would be a bank group meeting  
18 usually in Charlotte hosted by Wachovia or First  
19 Union and we'd go down there and meet with them.  
20 We'd have a presentation. We'd have Q&A.  
21 At other times we had meetings just  
22 between management and First Union as the syndicate  
23 manager. And it seems like we talked to  
24 representatives of the syndicate manager at least  
25 weekly on the phone and sometimes far more than

19

21

1 weekly. So there were -- there's a lot of  
2 communication.

3 Q. What was the purpose of sharing  
4 management's operational plans such as this plan to  
5 reduce the size of the retail organization with your  
6 bank group?

7 A. We felt it was important that we keep the  
8 bank group fully advised of what we were intending to  
9 do with the business. The bank group was spending a  
10 lot of money, our money, monitoring what we were  
11 doing so they understood where the business was  
12 headed, and they wanted to be kept informed of our  
13 plans and we certainly tried to do that.

14 Q. Did the bank group members ever make  
15 suggestions to you or comment on what management's  
16 plans were?

17 A. Yes.

18 Q. Do you remember any of those comments? I  
19 know that's a broad question.

20 A. I remember there were plenty of -- there  
21 was plenty of input from the banks. One thing in  
22 particular that sticks out, and if I thought about it  
23 I could probably think of more, we had a fair amount  
24 of capital deployed in an insurance business in  
25 Bermuda.

1 Q. And did you think that the banks -- the  
2 bank group's use of their leverage in that way was  
3 unfair?

4 A. No.

5 Q. Why not?

6 A. I didn't think the banks were trying to do  
7 anything that our original agreement with them didn't  
8 permit them to do. They were looking out for their  
9 best interests and we were looking out for ours.  
10 They certainly could have been much more draconian  
11 than they were.

12 They had plenty of opportunities to call  
13 the credit, which would have been to our great  
14 disadvantage. So no, I don't think they were unfair.

15 Q. I think I know the answer to this  
16 question, but to get your view on it, why would the  
17 bank group's calling the credit have been bad for  
18 Oakwood Homes?

19 A. We would have been unable to repay them.

20 Q. And what would have been the consequences?

21 A. That would have been very interesting.  
22 Presumably -- presumably we would have had to file  
23 for bankruptcy. Presumably they could have seized  
24 the assets if they'd cared to. They had a security  
25 interest in virtually everything we owned. I don't

22

24

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1 It was a consistently profitable business,  
2 but by deployed capital I mean letters of credit  
3 issued by members of this bank group and, therefore,  
4 represented a credit exposure to them. There was  
5 considerable discussion and they tried to reduce  
6 their exposure to Oakwood. They gave us plenty of  
7 encouragement to reduce the amount of capital  
8 deployed into the insurance business.

9 Q. Did management accept that suggestion?

10 A. We did. And just so you can get the full  
11 flavor of it, if we found ourselves in a default  
12 situation it was not unusual for the banks to say to  
13 us we'll waive this default and not make your  
14 indebtedness due and payable under the following  
15 conditions. And they -- there would be one, two,  
16 three.

17 Generally one of those conditions was we  
18 reduce their credit commitments under the facility.  
19 So if you want to do that, something has to go. So  
20 it's not so much that they necessarily told us we  
21 want you to get out of the insurance business, but  
22 they from time to time as a condition to not calling  
23 the credit wanted to reduce their exposure, and we  
24 had to figure out ways to do that to avoid having the  
25 facility called.

1 think the banks wanted to do that, but that's not an  
2 outcome we had to deal with at the end of the day.

3 Q. By not calling the credit, did you think  
4 that the bank group was trying to artificially  
5 prolong the life of Oakwood Homes Corporation for the  
6 sake of getting more fees from you?

7 A. No.

8 MR. CASTANARES: Mary, if you're about to  
9 move on, can I request a very brief break,  
10 please?

11 MS. WARREN: Sure.

12 THE VIDEOGRAPHER: We're off the record at  
13 9:34.

14 (A recess was taken.)

15 THE VIDEOGRAPHER: We're on the record at  
16 9:38.

17 (Exhibit Number 233 was marked for  
18 identification.)

19 Q. (By Ms. Warren) I'm showing you a  
20 document the court reporter has marked Defendant's  
21 Exhibit 233. It's entitled Oakwood Homes Corporation  
22 minutes of the meeting of the board of directors held  
23 Monday, May 6th, 2002, and Mr. Muir is listed as  
24 secretary of the meeting. Taking a look at the  
25 second page of this exhibit, in the second paragraph

23

25

1 there's a discussion on the corporation's liquidity  
2 outlook and credit facilities. Would you just read  
3 that paragraph to yourself briefly?  
4 A. I've read it.  
5 Q. The paragraph notes a potential  
6 transaction to exchange some or all of the  
7 corporation's outstanding senior notes due in 2000.  
8 Do you see that?  
9 A. Due in 2004?  
10 Q. Yeah. You're right.  
11 A. Right.  
12 Q. Sorry. 2004.  
13 A. Yeah. I see that.  
14 Q. Were you part of considering that  
15 potential transaction?  
16 A. Yes.  
17 Q. Did you ask Credit Suisse to give you  
18 ideas on how to refinance the 2004 senior notes?  
19 A. I don't remember doing so.  
20 Q. Do you know who in management did so?  
21 A. I infer that someone did because these  
22 minutes indicate that we did, but no, I don't  
23 remember who did it. It may have been -- may have  
24 been me.  
25 Q. Why did management want to refinance the

1 liquidity to service this debt.  
2 Q. The board minutes that are Exhibit 233  
3 referenced the proposal being crafted by Credit  
4 Suisse First Boston in response to management's  
5 inquiry. Was that proposal ever implemented?  
6 A. It was not.  
7 Q. Why not?  
8 A. I don't recall why we didn't pursue it. I  
9 thought about it. Myles thought about it. Bob  
10 thought about it. We ultimately didn't pursue it. I  
11 don't remember sitting down to have a discussion  
12 among the three of us or any subset as to exactly how  
13 we apparently all came to that conclusion.  
14 Q. Is it fair to say that it was management's  
15 decision not to proceed with the CSFB proposal?  
16 A. Yes. Counsel, I just might have left that  
17 last -- question before last a little bit unfinished  
18 when you asked me --  
19 Q. What was that?  
20 A. When you asked me why we decided not to  
21 implement the plan and I indicated truthfully that I  
22 didn't remember having a discussion among Myles or  
23 Bob and I about how we came to that conclusion or  
24 remember coming to the conclusion.  
25 Q. All right.

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1 2004 senior notes?  
2 A. Well, I'm not certain necessarily that we  
3 did, but one of the things that we were thinking  
4 about in May of 2002 was the state of the business,  
5 the near term prospects for improvement in the  
6 business and the fact that we had \$125 million of  
7 indebtedness that was due March 1, '04 and that was  
8 less than two years away. And one of the things that  
9 was on our mind was how we were potentially going to  
10 deal with that.  
11 Q. Was the maturity of the 2004 senior notes  
12 seen by management as a large problem?  
13 A. It was seen as a -- certainly as a  
14 potential problem and it was something that one is  
15 aware of in a business this size. A \$125 million  
16 obligation is substantial and you would not want to  
17 wait until the last minute to try and figure out how  
18 you were going to refinance that or repay it.  
19 Q. Were the senior notes -- and I'm including  
20 both the 2004 and the 2009 maturity dates -- a drain  
21 on the company's liquidity?  
22 A. Well, to the extent that any indebtedness  
23 is interest bearing, yes, because the coupon was  
24 around -- around eight-and-a-half percent on 360  
25 million was 24 million a year. So yes, it consumed

1 A. I didn't want you to think that I didn't  
2 have a view and I didn't tell you what it was. And  
3 I'll be glad to tell you if you want to ask me, and  
4 if you don't, that's fine.  
5 Q. Well, this is a first for a witness coming  
6 up with questions for me to ask, but since you've  
7 invited me, all right. Why did you -- what was your  
8 opinion on the Credit Suisse proposal to refinance  
9 the 2004 bonds?  
10 A. I wasn't in favor of it. I thought it was  
11 a very -- I thought it was kind of a neat plan  
12 actually. I didn't think it was a neat plan for us.  
13 Q. Why not?  
14 A. And the reason was it would have consumed  
15 a fair amount of cash to implement and it would -- I  
16 didn't think that knowing what I knew about the  
17 business and where I thought things were heading, I  
18 didn't think it was smart to trade off liquidity  
19 today that would have been a fair amount of money to  
20 defer a liquidity problem that might loom two years  
21 down the road.  
22 Q. Is it your recollection that other members  
23 of management came around to your view and that's why  
24 Credit Suisse's proposal was rejected?  
25 A. You know, I don't remember what Bob said

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1 he thought of it, what Myles said. For whatever  
2 reason, they didn't overrule me.  
3 (Exhibit Number 234 was marked for  
4 identification.)  
5 Q. (By Ms. Warren) I'm showing you a  
6 document that the court reporter has marked as  
7 Defendant's Exhibit 234 Bates numbered MNAT-6726 to  
8 6728 that's entitled Oakwood Homes Corporation  
9 meeting of the -- minutes of the meeting of the board  
10 of directors held Tuesday, June 25th, 2002. Mr. Muir  
11 is noted as being secretary of the meeting.

12 Please take a look at the last paragraph  
13 on the first page of Exhibit 234. It continues on to  
14 the second page, and just read it over to yourself.

15 A. I've reviewed this.

16 Q. I take it this was the occasion on which  
17 management informed the board that the loan  
18 assumption program was going to be discontinued?

19 A. We were certainly telling them we intend  
20 to discontinue it.

21 Q. Do you recollect anything about the  
22 discussion during this meeting concerning the loan  
23 assumption program?

24 A. I don't.

25 Q. Is it your recollection that the loan

1 beginning to get ready to put in motion that which  
2 needed to be done if we determined we needed to file.

3 Q. Was this the first time -- well, strike  
4 that. Did the company go ahead and engage counsel to  
5 assist in developing a plan of reorganization?

6 A. I don't recall engaging in 2002 any legal  
7 counsel relating to financial restructuring, any  
8 counsel that we had not already engaged. In other  
9 words, I don't remember any new lawyers showing up  
10 until the time that we engaged Morris Nichols to  
11 represent us as Delaware counsel and until the time  
12 we entered into a separate engagement with Hunton &  
13 Williams to represent us as special securitization  
14 counsel in the bankruptcy.

15 Q. Do you remember approximately when Morris  
16 Nichols was retained?

17 A. Gee, it would have been -- I don't  
18 remember exactly. Probably -- probably after August.  
19 I think it was actually fairly close to the filing  
20 when we -- when we selected the venue. We did not  
21 know where we were going to file at this point if we  
22 filed at all and until we knew, had selected venue.  
23 we didn't know where to hire lawyers, so -- we did  
24 have lawyers that represented us in the bankruptcy as  
25 North Carolina counsel that we had engaged and had

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1 assumption program was, in fact, ended soon  
2 thereafter?

3 A. It was.

4 Q. Take a look at the second page of  
5 Exhibit 234. In the middle paragraph beginning Mr.  
6 Standish commented there's a notation about a  
7 potential restructuring or reorganization I should  
8 say. Would you just read that to yourself?

9 A. I've read it.

10 Q. To your recollection was this the first  
11 time that management had raised the idea of a  
12 financial reorganization with the board?

13 A. I don't remember if it was or not. And  
14 again, financial reorganization, financial  
15 reorganization in this context means bankruptcy. We  
16 may have discussed although I don't have a specific  
17 recollection with the board from time to time other  
18 things that might be considered financial  
19 restructurings, for example, swapping out the '04s  
20 for the '09 notes.

21 That was, you know, an idea CSFB came up  
22 with. We discussed things like that with our board  
23 from time to time, so I just wanted you to understand  
24 that this referred to bankruptcy and this is what we  
25 were telling the board we were doing is we were

1 been working with for several years.

2 Q. Was this the Rayburn firm?

3 A. It was.

4 Q. Take a look at the second page again of  
5 Exhibit 234. There's a paragraph near the top of the  
6 page beginning Mr. Standish reported. Would you just  
7 read that paragraph over to yourself?

8 A. I've read it.

9 Q. Is it fair to say that what Mr. Standish  
10 said during this meeting was essentially that in a  
11 perfect world we could meet the maturity date for the  
12 2004 bonds, but it's very unlikely?

13 A. Well, what I wrote in the minutes was, and  
14 maybe I ought to just let my words speak for  
15 themselves, that cash flow projections indicated that  
16 adequate liquidity was in place to fund operations  
17 until the March 1, '04 maturity of 125 million of  
18 senior notes if one assumes the most favorable  
19 outcome with regard to some key uncertainties. I  
20 don't have any recollection beyond that of what he  
21 said.

22 Q. Well, then he goes on according to your  
23 notes to say that -- to list all of the key  
24 assumptions, including that the company -- that the  
25 corporation would meet all of its operating

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1 projections and emphasized the inherent uncertainties  
2 in such projections. Did the corporation have a  
3 history of meeting its operating projections?  
4 A. I think on balance if we went and looked  
5 from 1999 to mid-2002, we probably more often fell  
6 short of projections than we exceeded them.  
7 Q. So isn't the gist here that if everything  
8 went completely according to plan, the company could  
9 meet the maturity date for the 2004 bonds, but that  
10 what Mr. Standish is saying here is that it's  
11 unlikely?  
12 MR. CASTANARES: I object to this question  
13 as badgering the witness. He's testified he has  
14 no recollection beyond what's on the page, and  
15 to ask him to interpret the page further other  
16 than asking for his recollection if he has any  
17 is inappropriate.  
18 MS. WARREN: I disagree. You can go ahead  
19 and answer.  
20 THE WITNESS: I don't see any expression  
21 here of likelihood. He's saying as I read it if  
22 we meet our projections and these events occur,  
23 then we'll get to March 1, '04. I think if  
24 Myles had said he thought it was unlikely, I'd  
25 have probably written that down.

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1 Q. (By Ms. Warren) In the next paragraph  
2 after the discussion of the bonds Mr. Standish then  
3 starts to talk about financial reorganization; right?  
4 A. He does discuss potential for a financial  
5 reorganization, yes.  
6 Q. In your mind is there any relation between  
7 the two discussions, namely, the March 1st, 2004  
8 maturity of the 2004 bonds and the possibility of  
9 financial reorganization?  
10 MR. CASTANARES: Counsel, are you asking  
11 him if he has a recollection of thinking that  
12 then or are you asking him to interpret this  
13 document now?  
14 MS. WARREN: I'm asking for his  
15 recollection.  
16 MR. CASTANARES: Thank you.  
17 THE WITNESS: Could you repeat the  
18 question, please, or ask the reporter to read it  
19 back?  
20 MS. WARREN: Could you read it back,  
21 please?  
22 (The record was read by the reporter.)  
23 THE WITNESS: My recollection is that at  
24 the time I thought there were potentially a  
25 number of outcomes over the period from May of

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1 2002 to March of '04, one of which is we would  
2 get there just fine if things fell into place,  
3 if the market improved, if we implemented some  
4 plans we had in mind. At the time I thought  
5 there was a possibility we might not get there  
6 and that the wise course of action was to  
7 prepare for a bankruptcy if you concluded that  
8 that was in the best interests of the company to  
9 take that course.  
10 Q. (By Ms. Warren) When you say that we  
11 could get there, do you mean that the company -- you  
12 thought it was a possibility at this point in time  
13 that the company could get to March 1st, 2004 without  
14 the need to file for bankruptcy?  
15 A. I thought it was a possibility, yes.  
16 Q. Do you remember any particular point in  
17 time after June 25th, 2002 where you no longer  
18 thought it was a possibility that the company could  
19 avoid bankruptcy?  
20 A. Certainly by November 15th. I can't fix a  
21 date for you, but certainly by the time we went to  
22 Berkshire Hathaway in October we had concluded that a  
23 bankruptcy was the right thing to do. How far in  
24 advance of that meeting we concluded that, I don't  
25 recall. Might have been as early or earlier than the

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1 date on which we engaged CSFB, but I don't have a  
2 recollection of it.  
3 Q. At this point in time on or around  
4 June 25th, 2002 why did you believe it was a  
5 possibility that the company could avoid bankruptcy?  
6 A. You know, I don't have any direct  
7 recollection other than what I see in these minutes.  
8 We apparently had done some cash flow projections,  
9 projected our operations, made some prognostications  
10 as to sales and forecasted our liquidity needs and if  
11 certain events occurred as we had forecasted, we  
12 would get to March 1, '04; but other than what's on  
13 this piece of paper, I don't remember.  
14 Q. Do you remember if you believed that the  
15 operational changes that were being contemplated  
16 around that time by management could be successful?  
17 A. Again, I don't have a recollection of even  
18 exactly what they were at that time.  
19 MS. WARREN: Denise, are we on 235?  
20 THE COURT REPORTER: Yes.  
21 (Exhibit Number 235 was marked for  
22 identification.)  
23 Q. (By Ms. Warren) I've asked the court  
24 reporter to mark as the next exhibit, as Defendant's  
25 235, a two-page document Bates number#1 OHCLT-1676 to

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1 1677 It appears to be an E mail from Fiachra  
2 O'Driscoll to Douglas Muir dated Wednesday, March  
3 13th, 2002. Would you take a few moments and read  
4 that over, please? It's really just the first page.

5 A. I've reviewed it.

6 Q. Do you remember any discussion with Mr.  
7 O'Driscoll about his negotiating with the credit guys  
8 at Credit Suisse?

9 MR. CASTANARES: At any time, counsel.

10 or --

11 MS. WARREN: In relation to this. Sorry.

12 MR. CASTANARES: Thank you.

13 THE WITNESS: I don't have any  
14 recollection, you know, other than what I read  
15 on this piece of paper.

16 Q. (By Ms. Warren) Do you have any  
17 recollection of discussions about this having to do  
18 with this E mail?

19 A. About this particular E mail?

20 Q. Uh-huh.

21 A. About this particular E mail, no. About  
22 the subject matter of this E mail, I know we had a  
23 number of conversations with Fiachra. I don't know  
24 what conversations he had with his credit people.

25 Q. What was the nature of the conversations?

1 A. I think we did get some -- some minor  
2 relief on that. There was some, but as I remember it  
3 was helpful.

4 Q. When Oakwood Homes wanted some kind of  
5 change to its credit facilities with Credit Suisse,  
6 would that request typically go through Fiachra or  
7 would you go directly to the credit people at Credit  
8 Suisse or something else?

9 A. We would discuss it with Fiachra.

10 Q. And why is that?

11 A. He was our CSFB point man.

12 Q. So management didn't think it would be  
13 helpful to go directly to Credit without talking to  
14 Fiachra first?

15 A. I wouldn't have been in favor of doing  
16 that.

17 Q. And why not?

18 A. I didn't know the credit people. Credit  
19 people are unique individuals and it's best to let  
20 the investment banker people have those discussions  
21 with his credit people.

22 Q. And what do you mean credit people are  
23 unique individuals?

24 A. They have -- they tend to be very  
25 disciplined. They tend to have things they want to

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1 A. Well, the gist of it was we had a lot of  
2 incoming repo properties to deal with. Our  
3 historical method of dealing with repo properties was  
4 at least in part to remarket them through retail  
5 channels to a retail customer who required a loan in  
6 order to purchase the repo property. We had more  
7 repos to deal with than we had in the past and,  
8 hence, to continue selling homes at retail we needed  
9 to do more retail financing for repo properties.

10 At the same time our sales of new homes  
11 were tending to fall. So the percentage of all the  
12 loans we were doing in the finance company,  
13 relatively more of them were for repo properties and  
14 relatively fewer of them were for new properties.

15 There were limitations in the loan  
16 purchase facility that limited the number of repo  
17 refi loans, loans for sales of repossessions that  
18 could be included in essence a borrowing-based  
19 computation that was built into the warehouse  
20 document. And we asked CSFB if there was a way to  
21 get that limit raised to permit us to finance more of  
22 those repo refi loans through the loan purchase  
23 facility.

24 Q. Do you remember what the outcome of that  
25 request was?

1 see, ways they look at things. Fiachra would have  
2 much more knowledge of how they look at the world  
3 than I do, so I thought it was best to let him deal  
4 with the credit people.

5 Q. In your experience are credit people  
6 generally fairly tough on borrowers?

7 A. I'm not sure I know what tough means.  
8 Credit people tend to look out for credit risk, and  
9 that's their job. Some of it -- some of them  
10 undoubtedly do a better job of that than others.

11 Q. In your experience do you find that credit  
12 people tend to be more pessimistic about a borrower's  
13 prospects than say the investment bankers or other  
14 financial people in an institution?

15 MR. CASTANARES: Objection to form.

16 THE WITNESS: You asked me if they were  
17 more pessimistic?

18 Q. (By Ms. Warren) If you found -- if you  
19 would find them to be more pessimistic in your  
20 experience than others in a financial institution?

21 A. I'm trying to think how to give you a fair  
22 answer to the question. Let me answer that this way  
23 because I think it's the best I can do. We're  
24 speaking about credit people generally, not  
25 necessarily Credit Suisse credit people?

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Q. We're speaking generally, yes.

A. Generally, generally credit people are from Missouri. They want to see the results and not hear about them coming. Let me put it to you that way. I'm not sure that's necessarily pessimistic, but they like results that have been achieved in preference to results that hope to be achieved.

Q. I get you. Did you find the credit people at Credit Suisse to be in that vein or something different?

MR. CASTANARES: Objection to form.

THE WITNESS: With very limited exceptions I had virtually -- I had no contact with credit people at CSFB, again with just very limited exceptions.

Q. (By Ms. Warren) So you're telling me you don't have an opinion on that one way or another?

A. I've lost track of the question. I'm sorry. Opinion on what?

Q. Well, you told me earlier, and correct me if I'm wrong, that you find that credit people in financial institutions tend to like results that they have seen, that have been achieved rather than be told about what might be achieved. Is that fair?

A. Yes.

intend to go into today regarding that I have properly now made the record to designate as confidential for that purpose.

MS. WARREN: That's fine, but just clarify for me regarding which.

MR. CASTANARES: You asked him yesterday, for example, about potential distributions to creditors in the case.

MS. WARREN: Right.

MR. CASTANARES: Okay. And how much has been distributed to creditors may be a public record. I'm not sure, but how much might later be distributed to creditors may be material nonpublic information regarding -- and I'm not sure he even has any, but to the extent that he comments upon such questions at all, I want to make sure that I'm -- that I'm adequately making the record of confidentiality under our confidentiality order.

MS. WARREN: That's fine.

MR. CASTANARES: Okay.

MS. WARREN: You're not saying that --

MR. CASTANARES: I have no objection to you asking about it.

MS. WARREN: And you're not saying that

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Q. So my question was did you find the credit people at Credit Suisse to be like that or not?

MR. CASTANARES: Objection to form.

THE WITNESS: I'm not sure I had enough exposure to have an opinion about Credit Suisse credit people.

(Exhibit Number 236 was marked for identification.)

MR. CASTANARES: Counsel, I would just like to if I'm not interrupting a line of questioning at the moment to say that I notice you're bringing out his employment agreement and subject matters came up yesterday that had also come up in the Kvarda deposition regarding potential funds distributable to creditors in the case.

And in the course of that Kvarda deposition we stipulated that since those claims in the case are trading actively and predictions about possible distributions are material nonpublic information, that we would designate those portions of the transcript, the total of those matters as confidential pursuant to our confidentiality agreement. I'd like to make sure that what we did yesterday and anything you

Mr. Muir's compensation is confidential?

MR. CASTANARES: No, no, no, no.

MS. WARREN: You're just saying that any commentary about potential distributions to creditors should be kept confidential?

MR. CASTANARES: No, right. But since you have asked about certain benchmark incentive portions of his compensation arrangements that relate to distributions to creditors, that is what may elicit information that it's material nonpublic information, claims that are now trading.

MS. WARREN: That's fine.

MR. CASTANARES: Okay. This is 236?

MS. WARREN: The employment agreement is 236 and the second document is 237. And I'm sorry, we're out of -- don't seem to have staplers or paper clips, but 237.

(Exhibit Number 237 was marked for identification.)

MR. CASTANARES: Counsel, may I inquire about -- just to make sure that what I have is actually -- I'm just a little confused with my copy of Exhibit 236. It appears that my copy, a couple of pages may be out of order, and I'm not

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1 sure whether that's true in the original or not.  
2 I go 456666 through --

3 MS. WARREN: Yeah. I see what you mean.

4 MR. CASTANARES: Yeah. Through 72. And  
5 then the next page is 456665 followed by 456662.  
6 three and four followed by 456661 and then 60.  
7 Is that the way the original is?

8 THE WITNESS: It's the way -- I think the  
9 way mine is.

10 MS. WARREN: It's the way mine is, too.

11 MR. CASTANARES: Okay. As long as I have  
12 a copy of what has been marked as the original  
13 exhibit, I'm fine with it, but just want to make  
14 sure that that's the case. Thank you.

15 MS. WARREN: Yes. Well, I apologize.  
16 Today seems to be random copying day in terms of  
17 our exhibits.

18 MR. CASTANARES: No apology necessary. I  
19 just want to make sure we're at least literally  
20 on the same page.

21 Q. (By Ms. Warren) Exhibit 236 is entitled  
22 employment agreement and I believe that Mr.  
23 Castanares has just read the Bates numbers of it in  
24 detail, so I don't need to. It appears to be an  
25 employment agreement by and among Douglas R. Muir and

1 committee of unsecured creditors. And this letter on  
2 the front my understanding is simply a letter to  
3 counsel to the committee asking them to confirm on  
4 behalf of the committee that this is the agreement  
5 that we reached.

6 Q. What was the process by which management  
7 came to an agreement with the committee of unsecured  
8 creditors concerning success bonuses?

9 A. I don't know.

10 Q. You were not involved?

11 A. I was not.

12 Q. Who negotiated on behalf of management?

13 A. I don't know.

14 Q. There's a little confusion about what your  
15 potential compensation actually would be. I believe  
16 you said that -- I believe you said yesterday that  
17 assuming distributions to unsecured creditors hit 250  
18 million but less than 275 million, you get something  
19 like \$100,000 or maybe \$200,000; is that right?

20 A. I think I said that a hundred thousand was  
21 the number.

22 Q. Perhaps you can just explain to us in the  
23 middle column on page 456929 of Exhibit 237 there's a  
24 reference to a base salary for three top executives  
25 and it looks like the number is 1,025,000. And as

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1 the OHC Liquidation Trust. There are various  
2 exhibits and items attached to the actual employment  
3 agreement. Mr. Muir, would you just look through  
4 this document and disregarding the various cover  
5 letters, can you just verify that this is, in fact,  
6 your employment agreement with the liquidation trust?

7 A. It is.

8 Q. Turning to Exhibit 237 --

9 MR. CASTANARES: I don't have a copy of  
10 that, counsel. Thank you.

11 Q. (By Ms. Warren) Turning to Exhibit 237,  
12 this appears to be a letter from counsel for the  
13 official committee of unsecured creditors of Oakwood  
14 and counsel to Oakwood, Rayburn Cooper, dated  
15 October 8th, 2003 and it's Bates numbered  
16 OHCLT-456928 to 456930. Have you seen Exhibit 237  
17 before, Mr. Muir?

18 A. I have.

19 Q. And what -- what is this document to your  
20 recollection?

21 A. The second and third pages of it, those  
22 two pages appear to be identical.

23 Q. Yes. They do.

24 A. But the second page is the success bonus  
25 agreement that management reached with the official

1 you can see in one of the bullet points at the  
2 bottom, you are considered to be a top -- one of the  
3 top three executives.

4 There's also mention of a -- in the next  
5 column the target annual bonus that looks like it's  
6 \$650,000. And my question is can you explain this  
7 chart in light of your testimony yesterday about your  
8 expectation was you would get about \$100,000?

9 A. I think so. Let me try. And it's been a  
10 while since I've seen this chart, so I need to go  
11 back and review the bidding.

12 Q. That's fine. Take your time.

13 A. Okay. First of all, the amounts in this  
14 chart are aggregate amounts for three individuals.  
15 And to the best of my recollection the first number  
16 you referred to, the million twenty-five thousand,  
17 represents the aggregate base salary of those three  
18 individuals.

19 The amount shown as \$50,000 represents the  
20 aggregate target bonus of each of those -- of those  
21 three individuals taken together. And the million  
22 six seventy-five is the sum of the two. Does that  
23 help?

24 Q. That certainly does help, although if you  
25 take the base salary and the target annual bonus and

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1 divide them by three, it comes out to a lot more than  
2 \$100,000?  
3 A. I think I see what the problem is. This  
4 piece of paper contemplated three potential outcomes  
5 of the bankruptcy case. The first two listed on this  
6 page didn't occur. We didn't go straight liquidation  
7 of the assets and we didn't emerge stand alone.  
8 Therefore, we were under sale of the business option.  
9 By virtue of selling the business, which  
10 closed on April 13th of '04, the three of us earned  
11 in full the million six seventy-five that is shown on  
12 the line that says less than or equal to 250 million.  
13 Q. I see.  
14 A. Earnings of that amount were no longer  
15 contingent, and so the trust paid us. However,  
16 whether or not the trust ultimately distributes an  
17 amount of money to the unsecured creditors greater  
18 than 250 million is uncertain.  
19 In the event that that amount -- excuse  
20 me. In the event that that amount ultimately  
21 distributed to unsecureds exceeds 250 million but is  
22 ultimately less than 275 million, then the trust will  
23 pay the three of us the excess of two million oh  
24 ninety-four, which is the amount ultimately earned  
25 over the million six seventy-five they have already

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1 paid us, and my share of that is a hundred grand.  
2 Q. And you'll receive those amounts  
3 regardless of your current employment with Krispy  
4 Kreme?  
5 A. That's correct.  
6 Q. Thank you. The next thing I'm going to  
7 show you, Mr. Muir, is your affidavit from the  
8 bankruptcy proceedings in connection with first day  
9 orders. And I'm not going to ask you much about it,  
10 but I am going to ask you a few things about it.  
11 So what I suggest is that we take a break  
12 and you can read it over to yourself and then we'll  
13 come back on the record. Is that fair?  
14 MR. CASTANARES: Sure. If you're really  
15 only going to ask him about a few things about  
16 it, he probably has a pretty good memory of some  
17 of it anyway, but if you'd like to point out  
18 things to him that you'd like him to focus on,  
19 it might save a little time, so --  
20 MS. WARREN: Well, one of the things I'm  
21 going to ask is whether he still stands by the  
22 affidavit --  
23 MR. CASTANARES: Okay.  
24 MS. WARREN: -- or whether he'd like to  
25 change it in any respect. And if I'm going to

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1 ask a question like that, then I think he will  
2 want to have read the whole thing.  
3 MR. CASTANARES: Right. If you're going  
4 to ask a question like that, I'll object to it.  
5 Be a little more specific than that.  
6 MS. WARREN: You can do whatever you want  
7 to do.  
8 MR. CASTANARES: Okay. That's fine.  
9 MS. WARREN: We're going off the record.  
10 THE VIDEOGRAPHER: Off the record at  
11 10:27.  
12 (A recess was taken and Exhibit Number 238  
13 was marked for identification.)  
14 THE VIDEOGRAPHER: This is tape number  
15 six. We're on the record at 11:08.  
16 Q. (By Ms. Warren) Mr. Muir, I'm showing you  
17 a document that the court reporter has marked  
18 Defendant's Exhibit 238. It's your affidavit in the  
19 bankruptcy proceedings of Oakwood Homes and related  
20 companies in relation to first day motions and during  
21 the break you had a chance to read it over; correct?  
22 A. I did.  
23 Q. Let me direct your attention to page five  
24 of your affidavit and specifically the background  
25 section that starts on page five and continues to

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1 page 15. What I wanted to ask you is to your  
2 recollection was this section a generally accurate  
3 statement of Oakwood's business at the time that you  
4 filed this affidavit?  
5 A. I'm sorry. Can you say the question  
6 again?  
7 Q. Yes. Looking at the background section  
8 from pages five to sixteen of this exhibit, is it a  
9 generally accurate statement of Oakwood's business at  
10 the time you filed the affidavit?  
11 A. Yes. I think that it is.  
12 Q. Turning now to the section beginning page  
13 16 and ending page 19 that's entitled events leading  
14 to chapter 11 filing, was that a generally accurate  
15 recounting of the key events that caused Oakwood to  
16 file for bankruptcy as of the time you filed the  
17 affidavit?  
18 A. I think so.  
19 Q. Now I want to turn your attention to page  
20 36 of the affidavit. Paragraph 82, which starts on  
21 page 36 and continues to page 37, describes the  
22 securitization transactions that Oakwood historically  
23 entered into for financing purposes. Do you see  
24 that?  
25 A. I do

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1 Q. Did the Court approve Oakwood continuing  
2 with those securitization transactions after the  
3 bankruptcy filing?  
4 A. I believe that it did.  
5 Q. And who did Oakwood use as underwriter on  
6 those transactions?  
7 A. I'm trying to think. To the best of my  
8 recollection while we were authorized to securitize  
9 assets post securitization --  
10 Q. Post bankruptcy?  
11 A. I'm sorry. Post bankruptcy, I don't think  
12 that we ever did so. I don't think that we had an  
13 underwriter.  
14 Q. Why was that?  
15 A. Gosh, I'll have to think back. To the  
16 best of my memory, and this has been a long time ago,  
17 we considered putting together a securitization  
18 transaction post bankruptcy and took a number of  
19 steps toward that end.  
20 As I remember, the principal stumbling  
21 block was -- and there may have been others aside  
22 from this one, but one that sticks in my mind was the  
23 credit enhancement levels that were demanded by the  
24 rating agencies in order to achieve the desired  
25 ratings of the securities made it just very difficult

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1 to come up with a deal that made sense economically.  
2 And as a consequence we ultimately rather than  
3 securitizing the loans, we sold a large number of  
4 them on a whole loan basis.  
5 Q. And did any financial institution assist  
6 you with that sale?  
7 A. The sale of the whole loans to the  
8 investor?  
9 Q. Yes.  
10 A. I don't think so. I think we handled that  
11 directly with the investor is the best of my  
12 recollection.  
13 Q. Who was the investor?  
14 A. Greenwich Capital Markets.  
15 Q. Did the Court ultimately allow Oakwood to  
16 continue with the loan purchase facility?  
17 A. Yeah. I believe that it did.  
18 Q. And who were the parties to the loan --  
19 who was providing the loan purchase facility after  
20 the bankruptcy?  
21 A. The same people that provided it  
22 prebankruptcy, that is, CSFB or entities sponsored or  
23 affiliated with it.  
24 Q. How long did the loan purchase facility  
25 remain in existence after the bankruptcy?

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1 A. Until sometime in February of 2004.  
2 Q. Why was it terminated?  
3 A. It expired by its terms.  
4 Q. When did the sale to Clayton Homes  
5 Berkshire take place?  
6 A. Speaking of the sale of the entire  
7 company?  
8 Q. Yes.  
9 A. On or about April 13th, 2004.  
10 Q. Did you have any role in that transaction?  
11 A. I did.  
12 Q. What was your role?  
13 A. I participated with others in negotiating  
14 the terms of the sale, in negotiating the documents  
15 that memorialized the sale, in preparing  
16 administratively for the transition and sale of the  
17 company in April.  
18 As an employee of the trust I participated  
19 extensively in post closing negotiation with Clayton  
20 having to do with purchase price adjustments. There  
21 were probably some other things as well.  
22 Q. Do you remember what the sale price was?  
23 A. Precisely, no. It seems like it was  
24 somewhere between 200 and \$300 million, but it's been  
25 a while. I can't remember.

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1 Q. At the time did you think it was a fair  
2 price?  
3 A. I think that it was and from the  
4 standpoint -- a couple of observations. It was  
5 negotiated between, you know, two parties who were  
6 unrelated and we were negotiating for our side and I  
7 think they were negotiating for their side. It was  
8 interesting that the largest member if you will of  
9 our side was Berkshire Hathaway, which also owned the  
10 purchaser.  
11 That didn't have any effect on anything I  
12 did in negotiating the transaction, but the deal was  
13 negotiated between I think parties looking out for  
14 their own interests. Rather than selling the  
15 company, we had a plan in place and financing to  
16 emerge the company stand alone.  
17 So I don't feel that we were compelled to  
18 sell, although we were certainly encouraged to by the  
19 official committee. So on the basis on which it was  
20 negotiated, yeah, I think it was fair.  
21 Q. Do you think the company could have  
22 emerged from bankruptcy and survived as a stand alone  
23 company absent the sale to Berkshire Hathaway?  
24 A. I think we could have, yes.  
25 Q. Why do you think that?

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1 A. I think we had financing. I think we had  
2 the right leader. I think we had a commitment to do  
3 the things that needed to be done to strengthen the  
4 company over the long term. Would it have been easy?  
5 No. Could we have accomplished it? I think there's  
6 a reasonable likelihood that we could have.  
7 Q. Do you think Berkshire Hathaway got a good  
8 deal in buying Oakwood Homes?  
9 A. I think they got a fair deal based on what  
10 I knew then. I don't know how they've done with the  
11 business since they've owned it.  
12 MS. WARREN: I think we're done with this.  
13 Thank you.  
14 (Exhibit Number 239 was marked for  
15 identification.)  
16 Q. (By Ms. Warren) I'm showing you a  
17 document that the court reporter has marked as  
18 Defendant's Exhibit 239. It's the objection and  
19 counterclaims filed by the liquidation trust in this  
20 case. Have you ever seen this before, Mr. Muir?  
21 A. I believe that I received a copy of this  
22 sometime after it was filed. I'm pretty sure that's  
23 true.  
24 Q. You did not see any part of it before it  
25 was filed?

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1 A. I did not. And I'm not entirely certain I  
2 saw the final version after it was filed, but it was  
3 my understanding that what I was looking at was the  
4 final version.  
5 Q. When you received the objection and  
6 counterclaims, did you read it?  
7 A. I did.  
8 Q. Take a look at paragraph 19 of the  
9 complaint, which is on page 11, and just take a  
10 minute and read that to yourself.  
11 A. I've read it.  
12 Q. Do you believe that Credit Suisse sought  
13 to enrich itself through fees by negligently  
14 prolonging the life of Oakwood's securitization  
15 program?  
16 MR. CASTANARES: Objection to form.  
17 THE WITNESS: You know, I'm not sure I'm  
18 qualified to, you know, have an opinion as to  
19 whether or not CSFB was negligent. I mean, that  
20 has legal meanings. I'm not trained in the law.  
21 I'm not something -- sure that that's something  
22 I ought to have an opinion on.  
23 Q. (By Ms. Warren) Well, do you think that  
24 Credit Suisse intentionally advised Oakwood to  
25 artificially prolong the life of its securitization

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1 program just for the sake of getting fees?  
2 A. I have no reason to believe that.  
3 MR. CASTANARES: I didn't get to make a  
4 form objection before the answer came, but --  
5 Q. (By Ms. Warren) Do you believe that  
6 Credit Suisse intentionally advised Oakwood so as to  
7 artificially prolong its life outside of bankruptcy  
8 for the sake of fees?  
9 MR. CASTANARES: Objection to form.  
10 THE WITNESS: Well, again, I don't know  
11 what their intentions were. I don't -- I'm not  
12 sure I know what artificial means, but I  
13 don't -- I don't recall ever having a sense that  
14 CSFB took or failed to take any action or gave  
15 us any advice with the principal objective of  
16 earning them a fee.  
17 Q. (By Ms. Warren) Do you believe in the end  
18 that Piachra O'Driscoll and the folks working in his  
19 group at Credit Suisse merited your trust?  
20 A. We're talking about the people in the ABS  
21 group?  
22 Q. Yes.  
23 A. I trusted them, yes.  
24 Q. And do you think they did their best for  
25 Oakwood?

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1 A. I think as I testified yesterday, they  
2 worked very hard. I thought they had our interests  
3 at heart and they achieved very, very good results in  
4 my opinion.  
5 MS. WARREN: Thank you. I think we're  
6 through here.  
7 MR. CASTANARES: Thank you. I'd just like  
8 the witness to clarify one thing that occurred  
9 to me.  
10 EXAMINATION  
11 BY MR. CASTANARES:  
12 Q. Mr. Muir, yesterday you testified I  
13 believe you went to work for the trust in August of  
14 2004. Did you mean to say April?  
15 A. I did mean to say April. Thank you.  
16 MR. CASTANARES: Thank you, sir. No  
17 further questions.  
18 MS. WARREN: Thank you, Mr. Muir.  
19 THE WITNESS: Thank you.  
20 THE VIDEOGRAPHER: We're off the record  
21 at --  
22 MR. CASTANARES: Before we go off the  
23 record -- we can go off videotape. Before we go  
24 off the reported record, I presume we'll  
25 stipulate to the same thing we've stipulated to

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regarding signatures?

MS. WARREN: Yes.

MR. CASTANARES: The court reporter will then send the original to the witness, who will then transmit it to me. The court reporter is relieved of any obligation with respect to the original transcript. I will hold it subject to the same agreement we have with respect to the transcripts. Thank you, counsel.

MS. WARREN: Fair enough.

(Deposition concluded at 11:20 a.m.)

\* \* \* \* \*

DEPOSITION OF DOUGLAS R. MUIR, VOLUME II/KDN

I do hereby certify that I have read all questions propounded to me and all answers given by me on the 27th day of September, 2006, taken before K. Denise Neal, and that:

1) There are no changes noted.

2) The following changes are noted:

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure, which reads in part: Any changes in form or substance which you desire to make shall be entered upon the deposition...with a statement of the reasons given...for making them. Accordingly, to assist you in effecting corrections, please use the form below:

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STATE OF NORTH CAROLINA      C E R T I F I C A T E  
COUNTY OF GUILFORD

I, K. Denise Neal, RPP, Registered Professional Reporter and Notary Public, do hereby certify that DOUGLAS R. MUIR, VOLUME I was duly sworn by me prior to the taking of the Deposition; that said Deposition was taken and transcribed under my supervision; and that the foregoing pages 204 through 265 are a true and accurate transcription of the testimony of the said deponent.

I further certify that review and signing of the transcript by the witness was reserved.

I further certify that the persons were present as stated.

I further certify that I am not related to, of counsel for or in the employment of any of the parties to this action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 5th day of October, 2006.

K. Denise Neal, RPP

Registered Professional Reporter  
and Notary Public

My Commission Expires  
June 23, 2010.

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If supplemental or additional pages are necessary, please furnish same in typewriting annexed to this deposition.

DOUGLAS R. MUIR

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\$100,000 [48:19] [49:8] [50:2] \$125 [27:6,15] \$200,000 [48:19] \$300 [56:24] \$650,000 [49:6]	2003 [47:15] 2004 [26:9,12,18] [27:1,11 [20] [29:9] [33:12] [34:9] [35:7,8] [36:13] [56:1,9] [61:14] 2006 [3:] [63:20] [64:4] 2009 [27:20] 2010 [63:25] 204 [63:8] 208 [3:] 20th [12:5] 211 [4:] 212 [2:] 214 [4:] 216 [4:] 221 [4:] 228 [2:] [4:] 2285755 [2:] 228-5755 [2:] 2285788 [2:] 228-5788 [2:] 229 [4:] [8:20,22] [9:1,5] [11:21] 23 [63:25] 230 [4:] [11:24] [12:2,9] 231 [4:] [13:18,22] [14:3] [17:8] [19:18,19,25] 232 [4:] [18:18,22] [19:2] [20:12,13] 233 [4:] [25:17,21] [28:2] 234 [4:] [30:3,7,13] [31:5] [33:5] 235 [4:] [37:19,21,25] 236 [4:] [43:7] [45:14,16,24] [46:21] 237 [4:] [45:16,18,19] [47:8,11,16] [48:23] 238 [4:] [52:12,18] 239 [4:] [58:14,18] 24 [4:] [27:25] 240 [4:] 246 [4:] 248 [4:] 24th [18:24] 25 [4:] 250 [48:17] [50:12,18,21] 255 [4:] 25th [30:10] [36:17] [37:4] 261 [4:] 264 [3:] 265 [63:9] 275 [48:18] [50:22] 27th [3:] [64:4]	4  4 [4:] 41304 [4:] 4-13-04 [4:] 425 [3:] 456661 [46:6] 456662 [46:5] 456665 [46:5] 456666 [46:2] 456929 [48:23] 456930 [47:16]  5  5 [4:] 5602 [4:] 5-6-02 [4:] 5th [63:19]  6  6 [4:] 60 [46:6] 62502 [4:] 6-25-02 [4:] 650,000 [49:19] 6716 [12:3] 6717 [11:22] 6718 [9:6,7] 6722 [11:22] 6728 [30:8] 6801 [4:] 6-8-01 [4:] 6th [25:23]  7  7 [4:] 72 [46:4] 72401 [4:] 7-24-01 [4:]  8  8 [4:] 82 [53:20] 8th [13:25] [14:13,14] [47:15]  9  9:00 [3:] [5:2] 9:34 [25:13] 9:38 [25:16] 90067 [2:] 900676013 [2:] 90067-6013 [2:] 903 [2:] 9039000 [2:] 903-9000 [2:]	A  a.m [3:] [62:11] abs [60:20] absent [57:23] accept [23:9] access [15:7] accomplished [58:5] according [33:22] [34:8] accordingly [64:12] accumulating [10:14] accurate [53:2,9,14] [63:9] achieve [54:24] achieved [42:6,7,23,24] [61:3] action [36:6] [60:14] [63:17] actively [43:19] actual [47:2] actually [29:12] [32:19] [45:23] [48:15] additional [65:10] adequate [33:16] adequately [44:17] adjustments [56:20] administratively [56:16] adopted [13:12] advance [15:1] [17:14] [36:24] advances [17:10] advice [60:15] advised [22:8] [59:24] [60:6] affidavit [51:7,22] [52:18,24] [53:4,10,17,20] affiliated [55:23] again [6:25] [14:25] [15:10] [19:15] [31:14] [33:4] [37:17] [42:14] [53:6] [60:10] agencies [54:24] agent [6:4] aggregate [49:14,17,20] ago [54:16] agreement [4:] [16:9,22] [24:7] [43:12,24] [45:15] [46:22,25] [47:3,6,25] [48:4,7] [62:8] ahead [32:4] [34:18] albeit [11:10] allow [55:15] alone [50:7] [57:16,22] already [32:8] [50:25] alternative [7:23] although [31:16] [49:24] [57:18] am [51:10] [63:15] amendments [15:19] [16:7,19,20]
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***EXHIBIT Z***

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----x  
In Re: ) Chapter 11  
OAKWOOD HOMES CORPORATION, ) Case No. 02-13396  
et al., ) (PJW)  
Debtors. ) Jointly Administered  
-----x  
OHC LIQUIDATION TRUST, )  
Plaintiff, )  
vs. ) Adv. Proc. No.  
CREDIT SUISSE FIRST BOSTON, a ) 04-57060 (PJW)  
Swiss banking corporation, )  
CREDIT SUISSE FIRST BOSTON )  
LLC, a Delaware limited )  
liability corporation, CREDIT )  
SUISSE FIRST BOSTON, INC., )  
CREDIT SUISSE FIRST BOSTON )  
(U.S.A.), INC., a Delaware )  
corporation and a wholly )  
owned subsidiary of CREDIT )  
SUISSE FIRST BOSTON, INC., the )  
subsidiaries and affiliates )  
of each, and DOES 1 through )  
100, )  
Defendants.)

June 29, 2006

9:22 a.m.

Deposition of FIACHRA O'DRISCOLL, held  
at the law offices of Linklaters, 1345 Avenue of  
the Americas, New York, New York, pursuant to  
notice, before Donald R. DePew, an RPR, CRR and  
Notary Public within and for the State of  
New York.





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LINKLATERS

1345 Avenue of the Americas

New York, New York 10105

BY: MICHAEL J. OSNATO, JR., ESQ.

J. JUSTIN WILLIAMSON, ESQ.

R. PAUL WICKES, ESQ.

## ALSO PRESENT:

ELIZABETH SORENSON, Summer Associate,

Linklaters (p.m. only)

DAVID PELOZA, Videographer

29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

THE VIDEOGRAPHER: Here begins volume No. 1, videotape No. 1 of the deposition of Mr. O'Driscoll, in the matter of OHC Liquidation Trust versus Credit Suisse First Boston. Today's date is June 29th, 2006. The time is 9:23.

I'm the videographer, David Pelozo, from VideoLink in Los Angeles. We're at Linklaters, 1345 Avenue of the Americas, New York City.

I'd like the attorneys to introduce themselves starting with the plaintiffs first.

MR. CASTANARES: Tony Castanares, Stutman Treister & Glatt, for the plaintiff.

MR. HOLT: Whitman Holt, Stutman Treister & Glatt, for the Liquidation Trust.

MR. OSNATO: Michael Osnato of Linklaters on behalf of the defendants.

MR. WILLIAMSON: Justin Williamson of Linklaters on behalf of the defendants.

MR. WICKES: Paul Wickes of Linklaters on behalf of the defendants.

THE VIDEOGRAPHER: You may now swear in

Fiachra O'Driscoll

the witness.

FIACHRA O'DRISCOLL, called as a witness, having been duly sworn by the Notary Public, was examined and testified as follows:

## EXAMINATION BY

MR. CASTANARES:

Q. Good morning, Mr. O'Driscoll.

A. Good morning.

Q. Are you aware that the oath you've just taken is the same oath you would have taken if you were testifying in a court of law today?

A. I am now.

Q. Okay. And are -- either because of any medication you may be taking or for any other reason, are you impaired in any way today from being able to remember events that I'll ask you about or from being able to relate your memory of them to me?

A. Not that I know of.

Q. Okay. When was the first time you ever had any contact with any Oakwood company?

A. 1996.

Q. And tell me how that came about,

29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

Fiachra O'Driscoll

please.

A. I was asked to work on the 1996-A, I believe it was, securitization for Oakwood Acceptance, which was a securitization of their manufactured housing mortgage production. And I was asked by two of my senior colleagues to participate in that.

Q. What were their names, please?

A. Fred Terrell and Pilar Esperon.

Q. Could you spell those two names, please.

A. Fred, F-r-e-d, T-e-r-r-e-l-l, and Pilar, P-i-l-a-r, Esperon, E-s-p-e-r-o-n.

Q. And who were they?

A. They were employees of Credit Suisse.

Q. And were they your superiors?

A. Yes.

Q. What was Mr. Terrell's position?

A. I don't recall.

Q. And what was Ms. Esperon's?

A. When you mean "position" do you mean title?

Q. Title -- title would be good.

A. Yeah, I don't remember the title.

1 Fiachra O'Driscoll  
2 Q. And what about Ms. Esperon?  
3 A. I don't remember her title either.  
4 It's a long time ago.  
5 Q. Okay. And what was your position at  
6 that time?  
7 A. I was an associate.  
8 Q. And is that something below the level  
9 of director?  
10 A. Yes.  
11 Q. Is that the position immediately below  
12 the level of director?  
13 A. It's two positions below.  
14 Q. All right. What's the intermediate  
15 one, please?  
16 A. Vice president.  
17 Q. And how long had you then been working  
18 for any entity in the Credit Suisse or First  
19 Boston organization?  
20 A. Three and a half years.  
21 Q. When was the merger of Credit Suisse  
22 and First Boston?  
23 A. There were a number of mergers at  
24 different points in time.  
25 Q. Okay. What was the entity you first

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29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

1 Fiachra O'Driscoll  
2 went to work for that now has become --  
3 A. It was called Credit Suisse First  
4 Boston Ltd.  
5 Q. All right. And what -- strike that.  
6 Is that the same entity that you were  
7 working for in 1999, 2000, 2001, 2002?  
8 A. It would have been a sister entity.  
9 Q. All right. At what point did you  
10 work -- did you go to work for the second entity  
11 then?  
12 MR. OSNATO: Objection as to form.  
13 You can answer if you understand the  
14 question.  
15 A. In -- I think the -- I became an  
16 employee of Credit Suisse First Boston  
17 Corporation, which was at that time the U.S.  
18 entity, in January of 1995 --  
19 Q. All right.  
20 A. -- if that answers your question.  
21 Q. It does.  
22 Had you -- at the time you first were  
23 assigned to work on the Oakwood securitization had  
24 you had any prior experience in the manufactured  
25 housing industry?

8

1 Fiachra O'Driscoll  
2 MR. OSNATO: Objection as to form.  
3 You can answer.  
4 A. Yes.  
5 Q. Describe it, please.  
6 A. I had worked with another manufactured  
7 housing company, whose name I now forget.  
8 Q. All right. And were you doing a  
9 securitization for them as well?  
10 A. We were putting together a loan  
11 purchase facility for them.  
12 Q. All right. And that was --  
13 Would it be correct for me to infer  
14 that these were --  
15 A. The company in question is no longer in  
16 existence anyway.  
17 Q. All right. This is a loan purchase  
18 facility of loans generated by the purchase of  
19 homes by end users?  
20 A. Can you rephrase your question?  
21 Q. Yeah. This is a loan purchase  
22 facility, I believe you said.  
23 A. Yup.  
24 Q. And the loans that were being purchased  
25 were loans that were generated by the sale of

9

29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

1 Fiachra O'Driscoll  
2 manufactured housing product --  
3 A. Correct.  
4 Q. -- to end users on credit, correct?  
5 A. Yup.  
6 Q. And what was CSFB's role in that  
7 transaction?  
8 MR. OSNATO: Let me interject here.  
9 Your question is directed to work done for  
10 companies other than Oakwood?  
11 MR. CASTANARES: I'm asking what CSFB's  
12 role was in a transaction for the company he  
13 has not yet identified with respect to the  
14 securitization.  
15 MR. OSNATO: And we have, as you know,  
16 a pending dispute before the court as to the  
17 proprietary of discovery into work done by  
18 Credit Suisse for entities other than  
19 Oakwood.  
20 I'm happy to have Mr. O'Driscoll  
21 testify to the identities of companies other  
22 than Oakwood that he worked with and the  
23 subject matter of the work he did, but the  
24 substance in our view is inappropriate.  
25 MR. CASTANARES: My question is the

10

1 Fiachra O'Driscoll  
2 role that CSFB played in this. I think the  
3 record is clear, either instruct the witness  
4 not to answer the question or permit him to  
5 do so, please.

6 MR. OSNATO: I'm happy to have the  
7 witness answer as to role.

8 But in your answer please do not  
9 divulge any nonpublic information or  
10 confidential advice you may have given to  
11 that company.

12 A. In that case I better not answer,  
13 because I'm just not sure whether it -- it's a  
14 long time ago and I don't know whether it remains  
15 confidential or not.

16 Q. Did CSFB underwrite that transaction?

17 A. Which transaction?

18 Q. The transaction you've been describing  
19 that was the subject of my last question.

20 A. The Oakwood '96-A or --

21 Q. No. The prior manufactured housing  
22 transaction you --

23 A. No.

24 Q. I'm sorry?

25 A. No.

1 Fiachra O'Driscoll

2 Q. Yes.

3 A. No.

4 Q. I'm sorry, prior to the first contact  
5 you had with Oakwood.

6 A. Other than the one I've described, no.

7 Q. All right. And did you have any other  
8 experience in ABS transactions at that time?

9 A. Yes.

10 Q. Describe it briefly for me, please.

11 A. I had worked on a number of ABS  
12 transactions for some years prior to that, both  
13 mortgage securitizations, auto securitizations,  
14 rental car fleet financing securitizations, and  
15 probably a number of others in a minor way. Those  
16 would have been the primary ones.

17 Q. All right. And were all of those done  
18 as an employee of CSFB?

19 A. Yes.

20 Q. Had you had any experience in ABS  
21 transactions other than as an employee of CSFB?

22 A. No.

23 Q. When did you first do to work for CSFB?

24 A. June 1992.

25 Q. And was it your understanding that you

11

13

29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

1 Fiachra O'Driscoll  
2 Q. Was CSFB the purchaser in the loan  
3 purchase facility?

4 A. Yes.

5 Q. And was that the CSFB entity that you  
6 then worked for?

7 A. No.

8 Q. What CSFB entity was it?

9 A. I actually don't recall. It was a  
10 Credit Suisse entity.

11 Q. What is your current office address?

12 A. 11 Madison Avenue, New York, NY, 10010.

13 Q. And you're still currently employed by  
14 CSFB?

15 A. Yes.

16 Q. Are you employed now by the same entity  
17 you were employed by in 2001?

18 A. I am employed by -- yes, actually. The  
19 name has changed, but the entity is the same.

20 Q. All right. Other than the one  
21 transaction consisting of a loan purchase facility  
22 that you've identified, did you have any other  
23 experience in the manufactured housing industry at  
24 that time?

25 A. Prior to that?

1 Fiachra O'Driscoll

2 were -- when you first were assigned to work with  
3 Oakwood that you were replacing somebody else who  
4 had been fulfilling that function before?

5 A. I don't recall, actually.

6 Q. Did you, in fact, work on that first  
7 1996 securitization for Oakwood?

8 A. Yes.

9 Q. Did anybody else at CSFB do so?

10 A. Yes.

11 Q. Who else?

12 A. The supervisors in question that I  
13 named. Another gentleman by the name of  
14 Howard Dent and another gentleman by the name of  
15 Dane Matthews.

16 Q. And were these people superiors to you,  
17 equals to you?

18 A. Howard and Dane would have been --  
19 Howard would have been -- was also an associate.  
20 His role was the structuring and financial  
21 engineering of these transactions specifically.  
22 And Dane Matthews was an analyst who worked with  
23 us on the transaction.

24 Q. Tell me what you mean by "structuring  
25 and financial engineering."

12

14

Fiachra O'Driscoll

A. When you put together a mortgage securitization transaction of the type that I specialized in really throughout my career there's two aspects -- there's a number of aspects to it, but the pieces that fall most directly within the scope of the work that we pursue in these transactions really can be broken into a few parts.

The first is the analysis and the understanding of the pool of loans that are to be securitized themselves. Which means understanding for each of the loans in question its characteristics, its coupon amount -- which is obviously very important -- its legal maturity date, the date on which the mortgage loan matures, the parameters as to the credit of those loans, loan-to-value ratios, down payments, who the borrower is, the nature of that borrower, the borrower's credit scores, things of that sort.

Beyond that one also needs to understand the performance characteristics of the loan. What I really mean by that is loans, of course -- even though none of us have to make a mortgage payment beyond what we're legally

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loans themselves are distributed among the investors and how that can change depending on what the changes are in the underlying loans.

So if you characterize say my role during that period of time versus say a financial engineer's role, their role in the transaction would be to do the analysis of the loans themselves, the characteristics of the loans, the performance of the loans, to do the analysis of the securities to put together scenarios for those securities that are commonly referred to in the industry as what's known as computational materials.

Q. I'm sorry?

A. Computational materials is the term of art that's used for these things.

Q. All right.

A. What -- and that really would have been the role that Howard would have pursued.

The other piece, and this really gets to the interface between his role or a financial engineer's role in general and then my role, is that if a -- one would also have to work with the rating agencies. Because typically almost all the

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required to, typically people have the ability in some shape or form to prepay a loan or, indeed, to occasionally defer payments on loans.

So the -- so one of the most important things from an investor's point of view in understanding the nature of these instruments is that they should be able to examine scenarios as to how these loans will subsequently behave. In other words, when they can expect to see principal payments, when they will expect to see -- when they will expect to see them mature in all probability.

And then beyond that, with regard to the actual securities that they purchase. Because, you know, typically it's the case that people are not buying the raw loans themselves. In other words, unsecuritized loans. Typically, instead, they're buying securities that are issued by a trust or another legal entity which divides up the cash flows that come from the underlying instruments in ways that are kind of tailored to the investors in question.

So one of the things that they'll want to understand is how the actual payments on the

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securities issued by these kinds of things are rated by one, or two, or three rating agencies, usually Moody's, S&P, Pitch, and so on.

So what one would actually do in the course of a mortgage securitization is you would go approach the rating agencies, explain the nature of the transaction that you wanted to conduct. You would have to send financial models to the rating agencies. They would typically ask for more financial models. They would ask for stresses to be run. They might run their own stresses.

And they would -- using that information they would assign ratings to the securities. And generally those ratings -- in a typical securitization there would be securities that were rated from AAA to AA to A to BBB and often to BB or even below to B, and down to an unrated piece perhaps at the bottom of the transaction.

The interface between the financial engineer's role and my role would be that both he and I -- or she and I on occasion -- would work with the rating agencies on these kind of pieces

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18

1 Fiachra O'Driscoll  
2 to prepare the rating agencies for the rating  
3 process and to prepare the materials, offering  
4 circulars, red herring, sales points and sales  
5 materials for purely internal consumption, and so  
6 on.

7 And then my role, as distinct from the  
8 financial engineer's role, would be to ensure that  
9 the transaction was put together in a timely  
10 fashion, to make sure that the questions of the  
11 sales force were answered, to make sure that  
12 investors questions were answered, to make sure  
13 that the legal structure of the mortgage  
14 securitization itself worked as it probably -- or  
15 properly should do, and to make sure that the  
16 transaction got closed, processed, and that it was  
17 dealt with in the after market in a timely  
18 fashion.

19 And that's really -- apologies for the  
20 long answer, but that's really the two things that  
21 would have distinguished the financial engineering  
22 role from the asset securitization underwriting  
23 role.

24 Q. All right. And I take it that your  
25 role throughout your time with Oakwood was the

1 Fiachra O'Driscoll  
2 integrated in with the mortgage securitization and  
3 the underwriting role.

4 Q. All right. Tell me please in the  
5 underwriting role, I believe you said that certain  
6 financial information was supplied by you to the  
7 rating agencies; is that correct?

8 A. No.

9 Q. What kind of information was supplied  
10 by you to the rating agencies?

11 A. That would come in three forms, and  
12 none of which could be characterized as financial.  
13 I think, as you understand it. If you'll forgive  
14 me --

15 Q. Just tell me what --

16 A. -- making assumptions.

17 Q. Just tell me what information you gave  
18 them.

19 A. The information would have been  
20 information as to the loans themselves. What we  
21 would do is we would get a loan tape from the  
22 company or from wherever the loans were residing  
23 at a given point in time. We would use that  
24 information to compile a summary form of  
25 information on the loan pool itself. What that

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1 Fiachra O'Driscoll  
2 better?  
3 A. In summary, yes.  
4 Q. Yes. You were never in the financial  
5 engineer's role?  
6 A. That would be correct.  
7 Q. But there were other people at CSFB who  
8 fulfilled that function?  
9 A. Yes.  
10 Q. They were always internal to CSFB?  
11 A. Correct.  
12 Q. And did those people report to you?  
13 A. No.  
14 Q. To whom did they report?  
15 A. Different people at different points in  
16 time. But as a general rule there was a distinct  
17 kind of career progression and hierarchy for those  
18 financial engineering people.

19 It changed, frankly, numerous times  
20 over a decade as to how that was organized, as was  
21 true I think of most Street firms. There were  
22 different approaches to how that financial  
23 engineering function would have been organized.  
24 But I don't think that there was ever a point at  
25 which the financial engineering role was

1 Fiachra O'Driscoll  
2 would be is, for instance, the total principal  
3 balance of the loans on usually the first day of  
4 the preceding month, the original principal  
5 balance of the loans, the weighted average coupon  
6 on the loans, the loan-to-value ratio on average  
7 for all of the loans, and similar kinds of  
8 characteristics, that would be the first thing.

9 The second thing we'd supply the rating  
10 agencies with would be information on the  
11 performance of similar loans in the past.  
12 Generally speaking, those similar loans would be  
13 the performance of Oakwood's prior  
14 securitizations. Under certain circumstances, if  
15 it was not Oakwood, you might also share with the  
16 rating agencies other information about loan  
17 performance in general.

18 But typically in the Oakwood  
19 transaction you'd supply them for every  
20 securitization with a summary of the prepayment  
21 performance, delinquency performance, loss  
22 performance, changes in the coupon rate, changes  
23 in the characteristics of the loan pools in  
24 question, and that would be the information you'd  
25 supply the rating agencies.

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2 Q. And was there a third category?

3 A. I think that summarizes it.

4 Q. All right. Did you in the course of

5 these -- your underwriting function supply the

6 rating agencies with financial information about

7 Oakwood itself or any company in the Oakwood

8 family?

9 A. When you say "Oakwood," any company in

10 the Oakwood family?

11 Q. Right.

12 A. No.

13 Q. So as far as you know, the rating

14 agencies were relying upon information that was

15 publicly available?

16 A. I don't know.

17 Q. Okay. Did you ever receive requests

18 from rating agencies for information about the

19 creditworthiness of Oakwood itself or any company

20 in the Oakwood family?

21 A. Not to my recollection. That was

22 actually a separate function within the rating

23 agencies. They typically made their own

24 inquiries.

25 Q. All right. But to your knowledge were

23

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2 those inquiries ever made of anybody at CSFB?

3 A. I don't know.

4 Q. Whom did you first deal with when you

5 were introduced to Oakwood?

6 A. Doug Muir, who was the treasure of the

7 company.

8 Q. Anyone else?

9 A. At first, no.

10 Q. Okay. And just tell me as a typical

11 matter what the exchange -- well, let's strike it

12 out.

13 In that first securitization that you

14 participated in with Oakwood what kind of

15 information passed between you and Mr. Muir?

16 A. You know, it's a decade ago, I don't

17 think I can give you an answer.

18 Q. All right. Let me then ask you, in a

19 typical underwriting situation what kind of

20 information passes between the client company and

21 the person who was in your underwriting function?

22 MR. OSNATO: I'm going to object as to

23 the form.

24 But you can answer.

25 A. Typically the company would either send

24

1 Fiachra O'Driscoll

2 us or would arrange to have us sent a tape with

3 the loans in question that they intended to be

4 part of this mortgage securitization at any given

5 point in time, and that would be the first thing

6 that they would send us.

7 The second thing that they would send

8 us is they would often be the ones who would

9 prepare the information on the prior

10 securitizations characteristics, performance, and

11 so on, and they would send us that, too. And that

12 would be most typically the case.

13 Q. All right. And did you typically

14 receive from the company any information about its

15 financial statement?

16 MR. OSNATO: The same objection.

17 But you can go ahead and answer.

18 A. I don't think there's a typical answer.

19 Q. Did the company consult with -- strike

20 that.

21 Did any of the companies in the Oakwood

22 family ever consult with you or to your knowledge

23 anybody else at CSFB on whether or not it was

24 advisable to engage in a particular

25 securitization?

25

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1 Fiachra O'Driscoll

2 A. Can you be a little bit more precise

3 about what you mean.

4 Q. Did they ever seek your advice on

5 whether or not to --

6 A. Whether to proceed with a particular

7 securitization?

8 Q. Correct.

9 A. They would -- the dialogue that we

10 would have with the company on an ongoing basis

11 between securitizations would largely consist of

12 us briefing them on what the securitization market

13 was at any given point in time, what trends were,

14 what investors were doing, how spreads

15 essentially -- which is how interest rates are

16 measured in that kind of market -- were moving at

17 any given point in time. And whether this month,

18 or next month, or the month after would be a good

19 time to do a securitization.

20 Q. So would it be correct for me to

21 characterize that kind of advice as to the

22 economic feasibility of doing a securitization?

23 MR. OSNATO: Objection as to form.

24 You can answer.

25 A. No.

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1 Fiachra O'Driscoll  
2 Q. Did the company ever seek advice from  
3 you or to your knowledge anybody else at CSFB on  
4 whether or not it was in the best interests of the  
5 company to engage in a particular securitization?  
6 MR. OSNATO: The same objection.  
7 You can go ahead and answer.  
8 A. Can you narrow it down to a narrower  
9 time interval. That's -- you're talking about a  
10 decade here, so...  
11 Q. All right. Let's --  
12 A. It's a little hard for me to give such  
13 a sweeping answer.  
14 Q. Well, I'm really interested in knowing  
15 whether it ever happened or not, but I'll --  
16 A. The answer may be you may have to  
17 refresh my memory.  
18 Q. All right. Well, let me ask you this,  
19 beginning with -- all right.  
20 Are you aware that there was a downturn  
21 in the manufactured housing industry that began  
22 sometime in the neighborhood of 1999?  
23 A. Yes.  
24 Q. At any time since the commencement of  
25 that downturn did the company ever ask your advice

1 Fiachra O'Driscoll  
2 at all, if that's your question.  
3 Q. All right. That's a good question to  
4 answer. That's one question I intended to ask  
5 you.  
6 Did the company ever come to you and  
7 ask you whether it was a good idea for it to  
8 guarantee any of the tranches of the  
9 securitizations?  
10 MR. OSNATO: Objection as to form.  
11 You can answer that.  
12 A. They -- we had a discussion, which to  
13 my recollection -- and this would have been in  
14 early 1998 -- centered around the feasibility of  
15 selling their B2 securities with a guarantee, and  
16 what the market reception would be for such a  
17 security, and the feasibility of selling their  
18 securities without a guarantee.  
19 Q. Okay. Who was involved in that  
20 discussion?  
21 A. Doug Muir at least, probably others.  
22 Q. Okay. Anybody else on the CSFB side?  
23 A. I don't recall.  
24 Q. Tell me what you can remember about  
25 that discussion.

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1 Fiachra O'Driscoll  
2 on whether it was in the company's best interests  
3 to engage in a particular securitization  
4 transaction?  
5 MR. OSNATO: Objection as to form.  
6 A. What they would -- what they would ask  
7 me was whether a particular securitization should  
8 get done, for instance, this month or next month.  
9 Suppose, for instance, the company was  
10 to approach me and say, you know, we're thinking  
11 about doing the securitization next week. What I  
12 would tell them is that next week is not a good  
13 week, this is a holiday weekend, July 4th is going  
14 to be on Tuesday. It's going to be a difficult  
15 week to get investors attention.  
16 So can I suggest we put it off until  
17 the following week, or perhaps until August, or  
18 perhaps until after Labor Day. That would be the  
19 nature of the advice that they would have.  
20 We would also discuss the form of the  
21 securities to be offered and how we'd tailor those  
22 securities to what market conditions were at any  
23 given point in time.  
24 At no point did they actually ever come  
25 to us and say should we be doing securitizations

1 Fiachra O'Driscoll  
2 A. Very little, to tell you the truth.  
3 Q. Tell me what you can remember, please.  
4 A. I remember we put a presentation  
5 together on the subject.  
6 Q. All right. And this was a slide show  
7 type presentation?  
8 A. I would guess it probably -- that would  
9 have been typical.  
10 Q. All right. And tell me, as well as you  
11 can recall, what the subject matter of that  
12 presentation was.  
13 A. The market for B2 securities with or  
14 without a guarantee.  
15 Q. And did it in any way cover potential  
16 effects of these guarantees on the company's  
17 liquidity in the near or distant future?  
18 A. I don't recall. You'd have to show me  
19 it.  
20 Q. All right. And did it in any way  
21 attempt to assess the company's ability to pay on  
22 those guarantees if it should ever be called upon  
23 to do so?  
24 A. All I remember was that there was a  
25 presentation.

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1 Fiachra O'Driscoll  
2 Q. And if you wanted to look for that  
3 presentation today can you tell me what document  
4 you would look for?  
5 A. I wouldn't have access to that  
6 information today.  
7 Q. But if you wanted to find it...  
8 A. I wouldn't be allowed to.  
9 Q. What I would like you to tell me is the  
10 name of the document involved so that I can ask  
11 your lawyers for it.  
12 A. I don't remember the name of the  
13 document. It's eight years ago. I'm on the other  
14 side of a Chinese wall now and I no longer have  
15 access to that.  
16 Q. Tell me about that.  
17 A. Now I work within the CDO group, the  
18 collateralized debt obligations group, which is  
19 outside the Chinese wall of the securitization  
20 group.  
21 Q. What are you doing now?  
22 A. Can you rephrase your question?  
23 Q. What does the CDO group do?  
24 A. The CDO group takes securities  
25 typically -- typically mortgage securities.

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1 Fiachra O'Driscoll  
2 asset-backed securities, similar kinds of things  
3 and pools them together into transactions that  
4 investors then purchase and invest in.  
5 Q. Would --  
6 A. So it's almost like a resecuritization,  
7 if you will, of the underlying securities.  
8 Q. Are any Oakwood securities involved in  
9 any transactions you're involved in now?  
10 A. No.  
11 Q. Have they ever been since you've been  
12 working with the CDO group?  
13 A. I would need to check.  
14 Q. But the kinds of securities issued by  
15 Oakwood in the securitizations prior to its  
16 bankruptcy are the kinds of securities that the  
17 CDO group now deals in; is that correct?  
18 A. Correct.  
19 Q. And you just can't remember whether any  
20 Oakwood ones have been involved in your deals or  
21 not; is that right?  
22 A. You're talking about a span of  
23 thousands of securities.  
24 Q. So you don't remember one way or the  
25 other?

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1 Fiachra O'Driscoll  
2 A. I don't recall.  
3 Q. And because of that Chinese wall you're  
4 not permitted to access your own records of  
5 transactions that you engaged in with Oakwood  
6 prior to its bankruptcy?  
7 A. I think they're all in the hands of our  
8 legal people and probably in the hands of our  
9 counsel as well.  
10 Q. But you're not allowed to access them?  
11 A. Correct.  
12 Q. Okay. Now, before the time of  
13 Oakwood's bankruptcy did you have any personal  
14 experience in any other companies in the  
15 manufactured housing industry, other than what  
16 you've told me about already?  
17 A. Yes.  
18 Q. Tell me about that, please. Just give  
19 me a brief summary without --  
20 THE WITNESS: Is this something I'm  
21 permitted to get into?  
22 MR. OSNATO: Yes. Again, repeating my  
23 earlier instruction, you're permitted to  
24 identify companies other than Oakwood in its  
25 industry that provide a subject matter

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1 Fiachra O'Driscoll  
2 description of the services that  
3 Credit Suisse provided to those companies,  
4 without divulging any confidential business  
5 information or any nonpublic information that  
6 you may have had.  
7 MR. CASTANARES: And Mr. O'Driscoll, if  
8 I could, just for the sake of the court  
9 reporter, both of us have a tendency to cut  
10 each other off a little bit at the end of our  
11 statements --  
12 THE WITNESS: Oh, I'm sorry.  
13 MR. CASTANARES: And there's a good  
14 example of it. So if you'll try to let me  
15 finish, I'll try to let you finish.  
16 THE WITNESS: Very good.  
17 Q. Okay. So what I'm interested in my  
18 question, Mr. O'Driscoll, is not any confidential  
19 information. I'm interested in what personal  
20 experience you have in the manufactured housing  
21 industry before Oakwood's bankruptcy.  
22 A. I also worked with Green Tree  
23 Financial, which then became known as  
24 Conseco Finance; I worked with Bank America  
25 Housing Services, which later was known as

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1 Fiachra O'Driscoll  
2 GreenPoint Financial; I worked with  
3 United Companies, which is now bankrupt; I worked  
4 with Bombardier Capital, which has terminated its  
5 manufactured housing business. I worked with --  
6 United Companies, Bombardier, GreenPoint...  
7 I worked with Clayton Homes and its --  
8 specifically its mortgage activities was in a  
9 company called Vanderbilt, Vanderbilt Finance,  
10 Vanderbilt Financial.  
11 I'm sure I'm leaving somebody off the  
12 list there.  
13 Q. Okay. That's a good start.  
14 Were you doing asset-backed  
15 securitizations for any of these entities?  
16 A. Yes.  
17 Q. Which?  
18 A. At one point or another all of them.  
19 In other words, over a seven or eight-year time  
20 span at some point we did securitizations for  
21 every one of that -- every one of those companies.  
22 Q. All right. Now, which of those  
23 companies were actually engaged in the manufacture  
24 of manufactured homes?  
25 A. Clayton Homes.

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1 Fiachra O'Driscoll  
2 Sorry, there's one more I need to add  
3 to the list.  
4 Q. Okay.  
5 A. Champion Enterprises.  
6 Q. Okay. Was it also a manufacturer?  
7 A. Yes.  
8 Q. Okay. And were you doing ABS  
9 transactions for Clayton and Champion similar in  
10 nature to the ones you were going for Oakwood?  
11 A. For Clayton, very similar. For  
12 Champion we put together a loan purchase facility  
13 or a warehouse. One or the other, I don't recall.  
14 Q. What's the difference between a loan  
15 purchase facility and a warehouse?  
16 A. A warehouse typically is an  
17 arrangement, essentially a secured loan of some  
18 sort. They'll follow different forms -- and in  
19 truth there's been various legal fashions in what  
20 made for a good form over the last decade or so  
21 within the area, these things come and go in  
22 fashion -- under which a secured loan is made to a  
23 company that's secured by typically loans as they  
24 are originated.  
25 Q. All right.

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1 Fiachra O'Driscoll  
2 A. The reason they call them a warehouse  
3 is because it's essentially a place to -- for a  
4 company to put their loans before doing something  
5 else with them.  
6 A loan purchase facility is usually a  
7 flow purchase arrangement whereby you buy loans  
8 from the company, either one at a time or in small  
9 bulk amounts. And they -- and they're held there  
10 until such time as you either securitize them  
11 yourself or that there's some other outlet for  
12 them.  
13 Q. "Or," I'm sorry?  
14 A. Or there's some other outlet for those  
15 loans.  
16 Q. All right. And I believe -- did you  
17 say they're a flow purchase facility, did I hear  
18 that correctly?  
19 A. Flow in the sense that a -- what  
20 characterizes those kind of loan purchase  
21 facilities and, indeed, the warehouses is that  
22 companies in either of the two situations can  
23 usually deliver loans either literally one loan at  
24 a time, but more frequently can call up every two  
25 or three days, maybe every week and to deliver a

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1 Fiachra O'Driscoll  
2 small amount of loans into -- into that purchase  
3 arrangement or into that warehouse.  
4 Q. All right. And is it correct for me to  
5 infer from your description of these two  
6 transactions that each of them is intended to be  
7 temporary in one form or another?  
8 MR. OSWATO: Objection as to the form.  
9 You can answer that.  
10 A. Not necessarily.  
11 Q. The loan purchase facility can involve  
12 a permanent purchase of the loans?  
13 A. Yes.  
14 Q. The warehouse, however, would always be  
15 a temporary facility?  
16 A. Not necessarily.  
17 Q. Tell me of the situations in which it  
18 might not be.  
19 A. Literally it might or might not be. It  
20 could be temporary, it could be permanent.  
21 Q. How would a permanent warehouse  
22 facility operate?  
23 A. A permanent warehouse facility would be  
24 one that was -- rather than being in place for a  
25 short, finite period was in place for like what I

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1 Fiachra O'Driscoll  
2 might call a long finite period.  
3 Shall I carry on?  
4 Q. Please.  
5 A. You could have a warehouse situation,  
6 which is literally a three-month facility, for  
7 instance. A -- what I might characterize as a  
8 more permanent facility might be one that's in  
9 place for a fixed term of perhaps one years, or  
10 two years, or three years.  
11 Q. I notice that in a number of e-mails in  
12 this case you refer to the facility that was set  
13 up for Oakwood prior to its bankruptcy by CSFB  
14 New York branch as both an asset purchase facility  
15 and as a warehouse facility. And that also other  
16 members of the CSFB team refer to them in both  
17 such ways.  
18 Are the terms used relatively  
19 interchangeably?  
20 MR. OSNATO: Objection as to form.  
21 Are you talking specifically now about  
22 the Oakwood facility?  
23 Q. I'm talking about do you personally use  
24 those two terms interchangeably on occasion?  
25 A. If speaking correctly, I don't.

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1 Fiachra O'Driscoll  
2 Have I never done?  
3 I'm sure out there somewhere there's an  
4 e-mail somewhere that says warehouse.  
5 The -- ultimately either of those two  
6 forms of facility have the same effect from the  
7 company's point of view, which is that the company  
8 is seeking funding for its loans on a basis that's  
9 more frequent than waiting the three months or  
10 four months for a trade to do a securitization,  
11 so...  
12 Q. And in either case the company is  
13 paying compensation to either the lender in a  
14 warehouse facility or the purchaser in an asset  
15 purchase facility that is measured by a rate of  
16 interest; is that correct?  
17 MR. OSNATO: Objection as to the form.  
18 Can we clarify if we're talking  
19 specifically about Oakwood here or is this --  
20 are you seeking industry commentary?  
21 MR. CASTANARES: At the moment my  
22 question is broad.  
23 A. It might be or it might not be.  
24 Q. In the Oakwood situation the facility  
25 that was set up for Oakwood prior to its

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1 Fiachra O'Driscoll  
2 bankruptcy by the New York branch was one in which  
3 CSFB was compensated by a rate of interest,  
4 correct?  
5 A. I would need to go back and read the  
6 documents.  
7 Q. You have no independent memory one way  
8 or the other?  
9 A. I'd prefer just to refresh my  
10 recollection.  
11 Q. Were you involved in any way in the  
12 negotiation of that facility?  
13 A. Yes.  
14 Q. How so?  
15 MR. OSNATO: Before you answer, you can  
16 testify as to your negotiations with Oakwood,  
17 its counsel, its advisers. But in giving  
18 your answer do not disclose any  
19 conversations, communications that you may  
20 have had with Credit Suisse's lawyers that  
21 reflect legal advice.  
22 Q. My question is not intended to ask you  
23 what advice did Credit Suisse get from its  
24 lawyers.  
25 My question is, what was your role in

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1 Fiachra O'Driscoll  
2 the negotiation of the facility?  
3 A. I was one of the people most closely  
4 involved in the putting together of the facility  
5 itself and the term sheet that was proprietary to  
6 that facility.  
7 Q. And is that something that you normally  
8 did in the course of your employment at that time  
9 or was Oakwood the first time you had done that?  
10 A. Nope. No and no.  
11 Q. All right. So you didn't normally do  
12 that, but you had --  
13 A. No, sorry. Okay. Let me say yes and  
14 no.  
15 Q. The negotiation of the terms of a  
16 warehouse or asset purchase facility was something  
17 that you normally did in the course of your  
18 employment?  
19 A. That I frequently did.  
20 Q. Okay. And you did that on behalf of  
21 the provider of that facility, the New York  
22 branch?  
23 A. The provider was not necessarily always  
24 the same.  
25 Q. Okay. In the negotiation of the

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1 Fiachra O'Driscoll  
2 Oakwood prebankruptcy facility were you the CSFB  
3 person who had the authority to say yea or nay?  
4 A. Which facility exactly?  
5 Q. It is the facility that was established  
6 in early 2001 in which a warrant was given to CSFB  
7 for 20 percent of the shares of Oakwood, are you  
8 familiar with that transaction?  
9 A. Yes.  
10 MR. OSNATO: And I'm going to object to  
11 the form of the question.  
12 Q. I have sufficiently familiarized you  
13 with the transaction in question, you have it in  
14 mind now?  
15 A. Yes.  
16 Q. All right. Were you the person at CSFB  
17 who had the authority to say yea or nay to that  
18 facility on behalf of the New York branch?  
19 A. No.  
20 Q. Who was?  
21 A. I don't think that there was one single  
22 person.  
23 Q. Did somebody from the New York branch  
24 participate in the negotiation of the terms of  
25 that transaction also?

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1 Fiachra O'Driscoll  
2 A. Yes.  
3 Q. Who was that?  
4 A. I don't recall.  
5 Q. Do you know whether anybody at the  
6 New York branch had direct contact with Oakwood  
7 personnel in negotiating the terms of that  
8 facility or was it always you?  
9 A. I don't recall.  
10 Q. Other than the CRM department, was  
11 there somebody at the New York branch who had the  
12 authority to say yea or nay?  
13 MR. OSNATO: Objection as to the form.  
14 You can answer that.  
15 A. Can you -- do you want to rephrase the  
16 question?  
17 Q. Yeah. I just want to know who was the  
18 person who had the authority on behalf of the  
19 Credit Suisse family of companies to say yea or  
20 nay to that facility?  
21 I understand it had to go through a CRM  
22 process.  
23 A. I don't think there's one person.  
24 Q. Can you tell me any of the people who  
25 were responsible?

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1 Fiachra O'Driscoll  
2 A. I think your question is a little  
3 sweeping.  
4 Q. Well, I want to know who had authority  
5 to make this decision.  
6 A. As I said, I don't think there was any  
7 one person, though it -- these -- many of these  
8 things require a number of people to sign off on  
9 such a thing before it goes forward.  
10 Q. And do you know the names of any of  
11 those people?  
12 A. Yes.  
13 Q. Tell me them, please.  
14 A. Well, do you want to kind of identify  
15 some of the -- you know, specifically who signed  
16 off on that one, I don't know.  
17 Q. Did you have -- personally have any  
18 interface with the people who had authority to say  
19 yea or nay to this transaction?  
20 MR. OSNATO: Objection as to the form.  
21 A. Yes.  
22 Q. Describe that interface, please.  
23 A. What do you mean by the word  
24 "interface"?  
25 Q. Did you have contact with the people

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29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

1 Fiachra O'Driscoll  
2 who had the authority --  
3 A. What do you mean by "contact"?  
4 Q. Did you ever speak orally --  
5 A. Yes.  
6 Q. -- to any person who had the authority  
7 to say yea or nay to this transaction?  
8 A. Yes.  
9 Q. Did you ever have any written  
10 communication with any such person?  
11 A. Again, I don't think there is one  
12 person. There is no one person who had the  
13 authority to simply say yea or nay.  
14 Q. Okay. Well, so far my -- we're all  
15 digressing from the point where I've asked you the  
16 names of those persons who did have that  
17 authority, okay?  
18 A. Again, I think you're -- you're making  
19 a mistake of fact, which is that there was no one  
20 person who had the ability to say yea or nay as  
21 you've phrased it to such a transaction.  
22 Q. I would like to know the names of any  
23 person or persons. I don't care whether there was  
24 two of them or a thousand of them. I just want  
25 names from you, please.

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1 Fiachra O'Driscoll  
2 A. Okay. Can you rephrase your question?  
3 Q. Who were the persons who had the  
4 authority to say yea or nay to that facility?  
5 MR. OSNATO: And I'm going to object  
6 as --  
7 A. You know --  
8 MR. OSNATO: -- to the --  
9 Let me finish, please.  
10 THE WITNESS: Yeah.  
11 MR. OSNATO: -- as to -- I think we  
12 could move forward a lot more expeditiously  
13 if we used a term other than yea or nay.  
14 Because, as Mr. O'Driscoll has testified,  
15 there are multiple approvals.  
16 And if you are asking specifically  
17 about a credit approval it may be useful to  
18 phrase your question accordingly, rather than  
19 across the board.  
20 MR. CASTANARES: You may answer.  
21 A. Within -- let me try to answer your  
22 question as follows, on any transaction of this  
23 sort, which I think is probably the easier way to  
24 explain it, we would make a submission, which  
25 might be in writing or might be a verbal

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1 Fiachra O'Driscoll  
2 submission to credit risk management, usually only  
3 after we had discussed the matter with our  
4 supervisors.  
5 And that that submission to credit risk  
6 management would detail the nature of the company  
7 in question to whom we would be entering into the  
8 loan purchase facility, or the warehouse, or the  
9 reverse repo agreement, or whatever the form of it  
10 was.  
11 Individual people within credit risk  
12 management had formally the authority to commit to  
13 transactions with exposures up to certain limits.  
14 And that -- there was kind of a hierarchy, if you  
15 will, of the exposure limits that somebody would  
16 be allowed to enter into.  
17 How that exposure was measured varied  
18 significantly, depending upon the nature of the  
19 transaction in question, because you would have to  
20 approach CRM for transactions not merely ones that  
21 would be things such as, say, a warehouse loan or  
22 something of that sort. But things such as  
23 credit -- such as, for instance, interest rate  
24 swaps, things such as delayed settlement, really  
25 anything that could give rise to a credit exposure

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1 Fiachra O'Driscoll  
2 of Credit Suisse to a given counterparty.  
3 Q. All right. Maybe we can cut this  
4 short.  
5 Were the people that had the ultimate  
6 decision-making authority on whether or not to  
7 grant this facility in the CRM department?  
8 Because -- let me try to distinguish  
9 this for you. There are certain companies in  
10 which a credit manager will make a recommendation.  
11 And there is some executive who has the authority  
12 to make the decision, irrespective of whether he's  
13 following the credit manager's recommendation or  
14 not. I'm just trying to find out who the ultimate  
15 decision-making authorities were on this  
16 particular facility.  
17 A. The -- Tom Irwin, who is a credit  
18 officer for the Oakwood facility, technically had  
19 the authority to say yea or nay for the  
20 transaction on his own. In this particular  
21 instance he chose not to, which was not an unusual  
22 thing. That was actually fairly common, because  
23 even though people had this theoretical capability  
24 to approve things, a lot of stuff got done by  
25 committee, if you will, within credit risk

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1 Fiachra O'Driscoll  
2 management.  
3 And he -- the ultimate approval for it  
4 came not just from him, but I know for certain  
5 that his supervisor, which was a gentleman by the  
6 name of David Malletta --  
7 Q. Spell that, please.  
8 A. David Malletta, M-a- -- I'm not so sure  
9 I'm going to have the spelling right. I'm going  
10 to have a crack at it. M-a-l-l-e-t-t-a.  
11 Q. All right.  
12 A. Give or take.  
13 And in turn his supervisor,  
14 Robert O'Brien, were involved in the  
15 transaction, as well as his supervisor, which  
16 was Dick Thornburgh, Richard Thornburgh.  
17 Q. How does James Xanthos, X-a-n-t-h-o-s,  
18 fit into that hierarchy?  
19 A. He was an associate who worked for  
20 Tom Irwin.  
21 Q. All right. Had you completed your  
22 answer?  
23 A. Yes.  
24 Q. Thank you.  
25 All right. And do I take it then, sir,

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1 Fiachra O'Driscoll  
2 that to the extent that you had contact with CSFB  
3 New York branch regarding this facility your  
4 contact was with somebody in the CRM department?  
5 A. Not necessarily, because CRM covered  
6 not just the New York branch, but it also covered  
7 Credit Suisse First Boston Corporation, the  
8 broker-dealer. I would also have talked to  
9 Tony Giordano, who is the -- one of the officers  
10 at least during that period of time within the  
11 New York branch, and probably to other people as  
12 well.  
13 Q. All right. And Mr. Giordano was  
14 employed by the broker-dealer?  
15 A. I believe he was employed by the  
16 branch.  
17 Q. Is that the broker-dealer?  
18 A. No, the branch.  
19 Q. The branch. Okay.  
20 All right. And what was his role in  
21 that -- this facility?  
22 A. His role was to represent the branch.  
23 Q. On issues other than CRM issues?  
24 A. Precisely.  
25 Q. Okay. And what was the nature of his

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29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

1 Fiachra O'Driscoll  
2 responsibility?  
3 A. Ensuring that from the point of view of  
4 the branch that the transaction was put together  
5 correctly.  
6 Q. All right. Now, had this cast of  
7 characters changed -- or strike that.  
8 Did this cast of characters change with  
9 respect to the transaction or proposed transaction  
10 that was referred to as the warehouse facility in  
11 the weeks leading up to and shortly following  
12 Oakwood's bankruptcy?  
13 MR. OSNATO: Objection as to the form.  
14 You can answer.  
15 A. Now, what do you mean --  
16 Q. Was it the same people?  
17 A. When you refer to the warehouse  
18 facility are you referring to the loan purchase  
19 facility?  
20 Q. I'm talking about --  
21 You are aware, sir, that in the weeks  
22 preceding up to the bankruptcy of Oakwood on  
23 November 15th, 2002 CSFB was acting as financial  
24 adviser to Oakwood?  
25 MR. OSNATO: Objection as to the form.

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1 Fiachra O'Driscoll  
2 You can answer.  
3 A. I believe that's correct.  
4 Q. And one of the things that CSFB was  
5 attempting to do was to put into place what it  
6 referred to at the time as a warehouse facility,  
7 correct?  
8 MR. OSNATO: Same objection.  
9 A. I don't think that's correct.  
10 Q. Do you think it referred to it at the  
11 time as a loan purchase facility?  
12 A. I don't recall us putting together  
13 anything in that period of time.  
14 Q. I'm sure you didn't, but the question  
15 is whether you were attempting to do so.  
16 A. Not that I recall.  
17 Q. So is it your testimony that during the  
18 period leading up to Oakwood's bankruptcy CSFB was  
19 not making any effort to put together some sort of  
20 warehouse or loan purchase facility for Oakwood?  
21 MR. OSNATO: Same objection.  
22 You can answer.  
23 A. During that period of time there was a  
24 loan purchase facility in place. There -- I was  
25 never asked to put together any type of warehouse,

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29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

1 Fiachra O'Driscoll  
2 that I can recall.  
3 Q. Or loan purchase facility?  
4 A. Or a loan purchase facility.  
5 Q. Were you asked to obtain a waiver from  
6 CSFB New York branch of the provision in that  
7 facility that created a right to suspend it upon  
8 Oakwood's bankruptcy?  
9 MR. OSNATO: Objection as to the form.  
10 Asked by whom?  
11 MR. CASTANARES: You may answer.  
12 A. Yes.  
13 Q. Who asked you to do that?  
14 A. An Oakwood officer. Precisely whom, I  
15 don't recall.  
16 Q. And did you make any such efforts?  
17 A. Yes.  
18 Q. And at any time after the putting into  
19 place of the facility of early 2001 that we have  
20 been talking about, as distinguished from  
21 obtaining a waiver of a provision in that  
22 facility, was there any effort to put together a  
23 new facility of that type?  
24 MR. OSNATO: Objection as to the form.  
25 Q. Including after Oakwood's bankruptcy.

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1 Fiachra O'Driscoll  
2 MR. OSNATO: You can answer it.  
3 A. Not that I'm aware of.  
4 Q. So do I take it then, sir, that you  
5 never made any effort to go out to any other  
6 potential provider of warehouse or loan purchase  
7 facilities outside of CSFB to attempt to put one  
8 into place on Oakwood's behalf?  
9 A. I was never asked to.  
10 Q. And you never did it, right?  
11 A. I was never asked to.  
12 Q. You never did it?  
13 A. I never did it either.  
14 Q. Were the people who were involved in  
15 deciding whether or not to waive the provision  
16 that I've described of the 2001 loan purchase  
17 facility the same people who were involved in its  
18 approval in the first instance?  
19 A. Some of them would have been the same.  
20 Q. Who changed?  
21 A. I don't recall, but certainly some of  
22 them would have been the same.  
23 Q. Was Irwin still involved?  
24 A. Yes.  
25 Q. And was Xanthos still involved?

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1 Fiachra O'Driscoll  
2 A. I don't recall.  
3 Q. Was anybody else from CRM still  
4 involved?  
5 A. Bob O'Brien was still involved, for  
6 sure. I think David Malletta was involved as  
7 well.  
8 Q. Who was your main interface in CRM on  
9 that transaction?  
10 A. My main interface on any of those kind  
11 of transactions was Tom Irwin.  
12 Q. And were you the person principally  
13 charged with attempting to get that waiver?  
14 MR. OSNATO: Object to the form.  
15 A. By whom?  
16 Q. By your employer.  
17 A. No.  
18 Q. Who was?  
19 A. Nobody was.  
20 You asked "by my employer."  
21 Q. By anybody in the Credit Suisse family.  
22 Was there somebody else who was --  
23 A. Well, to be precise, the company were  
24 the people who asked us to go and get that waiver.  
25 Q. "The company" was Oakwood?

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1 Fiachra O'Driscoll  
2 A. Yes.  
3 Q. And when you say "us" are you referring  
4 to CSFB?  
5 A. Credit Suisse, yes, exactly.  
6 Q. And were you the person who took that  
7 responsibility principally for Credit Suisse?  
8 A. Yes.  
9 Q. Did anybody else work with you in that  
10 regard?  
11 A. I would have been the person  
12 responsible for it.  
13 Q. All right. At the time you first had  
14 contact with Oakwood --  
15 I believe you said 1996, am I correct?  
16 A. Correct.  
17 Q. -- was Oakwood engaging in any other  
18 method of monetizing its RIC paper, other than ABS  
19 securitizations?  
20 A. Its "RIC paper"?  
21 Q. Yes, retail installment contracts.  
22 A. Oh, okay. I never heard of them.  
23 Q. Okay.  
24 A. I never heard that euphemism in a  
25 decade in this business before, but...

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29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

1 Fiachra O'Driscoll  
2 Q. How shall we call the paper that's  
3 generated by end users when they purchase homes  
4 from Oakwood?  
5 A. Probably just calling them mortgages,  
6 you see.  
7 A portion of them were retail  
8 installment sales contracts, particularly at the  
9 beginning of that period of time. I think the  
10 term used almost universally in the industry is  
11 simply mortgages, without regard to the precise  
12 legal form of the instrument. From the point of  
13 view of the borrower they call them that.  
14 Q. If we want to talk about this paper  
15 generated by end users in the course of this  
16 deposition, if I call them mortgages is that --  
17 A. I'm sure no one will object.  
18 Q. -- that's fine?  
19 As long as you and I are talking --  
20 A. We'll all be on the same page.  
21 Q. Good. At least -- that will be fine.  
22 Was Oakwood using any other method to  
23 monetize those assets, other than ABS  
24 securitizations at the time you first came on  
25 board?

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1 Fiachra O'Driscoll  
2 A. From time to time they sold loans also.  
3 Q. Was CSFB involved in any of those  
4 sales?  
5 A. We might have been involved in one or  
6 two --  
7 Q. Right.  
8 A. -- along the way.  
9 As a general rule, no.  
10 And I don't have a specific  
11 recollection.  
12 Q. All right. Were there any such  
13 transactions after you came on board?  
14 A. In other words, were there any hold-on  
15 sales by Oakwood?  
16 Yes. Yes, there were.  
17 Q. Let me ask a broader question. What  
18 I'm interested in knowing is whether after you  
19 came on board in 1996 Oakwood engaged in any  
20 transactions to monetize its mortgages, other than  
21 ABS securitizations. And let me exclude from this  
22 the B2 transaction, the Berkshire transaction.  
23 A. Which was really a securities  
24 transaction anyway.  
25 Q. Okay. We'll come to that.

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29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

1 Fiachra O'Driscoll  
2 But do you have my question in mind  
3 now?  
4 A. Yeah. Well, if I -- forgive me if I  
5 give you a slightly more expansive answer.  
6 Q. Fine.  
7 A. At different points in time my  
8 recollection is that Oakwood did so and was able  
9 to sell a small number of loans on a kind of a  
10 local retail basis, not huge amounts, at  
11 relatively good prices.  
12 In other words, a price approximating  
13 to par, sometimes maybe a little bit more than  
14 par, sometimes a fraction less than par, but in  
15 the context of the face value of the mortgage  
16 itself to a number of different people.  
17 I don't have specific recollections,  
18 but I think that Bombardier purchased some from  
19 Oakwood in '98 or '99. I think there were a few  
20 others as well, where there were small  
21 transactions of that sort.  
22 Sometimes also the local sales centers  
23 would sell some of their mortgage product on their  
24 own initiative, if you will, to other parties as  
25 well.

1 Fiachra O'Driscoll  
2 By and large there wasn't a very  
3 efficient market for bulk sales of mortgages in  
4 the way that -- for instance, today there is in  
5 what one would consider conventional prime  
6 mortgages, where you can actually take a portfolio  
7 of raw mortgages and sell that for a very  
8 efficient price to a very broad market. Back at  
9 that point in time whole loan sales when they were  
10 conducted were, A, usually done at a fairly sharp  
11 discount to par, significantly less than the  
12 proceeds that one could get out of a  
13 securitization, irrespective of whether you sold  
14 the B2 security or not.  
15 And beyond that it was generally a  
16 fairly long -- a fairly long, drawn out process.  
17 So it wasn't really seen in the industry as being  
18 a viable, long-term approach to selling anything  
19 other than a one-off pool of mortgages.  
20 Q. All right. And with respect to -- to  
21 the extent that Oakwood engaged in any such  
22 transactions was CSFB involved in any way in them?  
23 A. I think we might have had a tangential  
24 involvement with a Bombardier discussion, but  
25 frankly my -- my recollection is pretty hazy.

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1 Fiachra O'Driscoll  
2 Q. All right. And I believe you described  
3 the Berkshire transaction as a securities  
4 transaction.  
5 A. Yes.  
6 Q. What did you mean by that?  
7 A. The Berkshire transaction was a -- you  
8 may see it in the documents as -- I think it was  
9 called the Lotus Resecuritization Trust. And it  
10 was a transaction in which a collection of the B2  
11 securities, which were at the -- essentially the  
12 bottom securities within each of the mortgage  
13 securitizations were taken, put into a new trust,  
14 a single new trust. And a single note was issued  
15 that was collateralized by all of those B2s. And  
16 that note was then sold to Berkshire Hathaway  
17 after a guarantee was wrapped around the entire  
18 note by -- by I think Oakwood Homes.  
19 Q. All right. Now, these B2s, did they  
20 carry an Oakwood guarantee before these Berkshire  
21 transactions occurred?  
22 A. When you say "these B2s," the B2s that  
23 were the subject of the Lotus transaction?  
24 Q. Correct.  
25 A. Some of them did, some of them didn't.

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1 Fiachra O'Driscoll

2 Q. And what was the nature of the  
3 guarantee that Oakwood issued at the time of this  
4 transaction?

5 A. It was a guarantee that in the event  
6 that the S2s failed to pay the stated interest  
7 coupon on the security, on their security, or  
8 failed to pay the principal amounts when they  
9 became due, that Oakwood Homes Corporation would  
10 make a payment to the -- I believe to the  
11 securitization trust equal to the difference  
12 between what was due and what was actually paid.

13 Q. Okay. And was Berkshire the sole  
14 holder of that securitization trust?

15 MR. OSNATO: Objection as to the form.

16 A. I believe so.

17 Q. Okay. So did this have the effect of  
18 increasing the total amount of Oakwood's guarantee  
19 liability?

20 A. Yes.

21 Q. Do you have any figure in mind as to  
22 the amount by which that increased?

23 A. I think it -- it changed over time,  
24 because there were actually a number of different  
25 transactions that bundled -- bundled the guarantee

1 Fiachra O'Driscoll

2 sold into the securitization trust to Berkshire?

3 A. Correct.

4 Q. Okay. When you first came upon the  
5 scene at Oakwood in 1996 did you make any changes  
6 in the way that Oakwood was handling these  
7 securitization transactions or in the way that  
8 CSPB was acting in connection with them?

9 MR. OSNATO: Objection as to the form.

10 You can answer that.

11 A. Can you be more specific about what you  
12 mean by "handling."

13 Q. Did you cause any changes to occur in  
14 the transactions themselves or in CSPB's  
15 relationship with Oakwood regarding the  
16 securitization transactions?

17 MR. OSNATO: The same objection.

18 A. The answer is, yes.

19 Q. What changes?

20 A. You -- I think we would need to break  
21 it down into smaller time intervals. Because over  
22 seven or eight years that passed there were quite  
23 a number of small changes in one way or another.

24 Q. All right. Let's --

25 A. There were changes, for instance, to a

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1 Fiachra O'Driscoll

2 liability together into one.

3 Q. All right. And did all these  
4 transactions take place at 55?

5 A. At dollar price of 55?

6 I don't believe so, but it was around  
7 that level. I'm pretty sure, in fact, that there  
8 were small differences from 55.

9 Q. And do I correctly understand your  
10 prior answer as being that Oakwood's guarantee was  
11 effectively at par on both principal and coupon?

12 A. Correct.

13 Q. So the economic effect of this  
14 transaction was that Oakwood was getting a price  
15 which was roughly 55 and guaranteeing 100; is that  
16 correct, plus interest?

17 A. That is correct.

18 Q. And before that transaction occurred  
19 the holder of the B2 securities that were packaged  
20 into it was Oakwood or one of the companies in its  
21 family; is that correct?

22 A. I believe that it's generally correct,  
23 yes.

24 Q. This was a securitization of assets  
25 that were held by Oakwood and then essentially

1 Fiachra O'Driscoll

2 degree in the nature of the information that we  
3 provided to investors. In the early part of that  
4 period it was before computational materials were  
5 provided, for instance.

6 At that time, back in 1996, the norm  
7 was that you would deliver to an investor at the  
8 initiation really of the offering a red herring,  
9 much as you would with an equities offering or  
10 with anything else at that point in time. And  
11 that red herring would have really everything  
12 within the document, apart from the coupon rates  
13 on the individual REMIC securities that were being  
14 issued out of, et cetera, et cetera.

15 Then computational materials came into  
16 common acceptance in the period kind of after  
17 that, probably sometime in 1997. And it was  
18 during that period of time that we tended to shift  
19 over in terms of the nature of the offering  
20 materials that were shown out to that kind of mode  
21 in the first instance and simply proceeded  
22 directly to a final prospectus without recourse to  
23 preparing a red herring in advance.

24 Part of it was that the documents were  
25 sufficiently stable and sufficiently well

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1 Fiachra O'Driscoll  
2 understood during that period of time, that  
3 investors were content to dispense with needing a  
4 red herring. And, in fact, were generally looking  
5 for a shorter form summary of what the  
6 characteristics of the loans and what the  
7 individual characteristics of the securities  
8 themselves were.

9 Then practically every securitization  
10 in truth had small changes to it in the nature and  
11 the form of the securities themselves that were  
12 offered, changes in the average lives, changes in  
13 the precise ratings, changes in which rating  
14 agencies might be used on the transactions, might  
15 rate the transaction, things of that sort.

16 Q. All right. Let me ask you to clarify a  
17 point in a couple of answers you've given before  
18 where you've talked about information given to  
19 purchasers.

20 In these securitization transactions  
21 did you have personal -- personally have contact  
22 with any potential purchasers of the securities  
23 being issued?

24 A. Of -- of which securities, of the REMIC  
25 securities generally?

1 Fiachra O'Driscoll  
2 to the financial engineering function that you've  
3 described and in addition to the contact with the  
4 rating agencies and the contacts with the  
5 purchasers that you just described what, if any,  
6 other services did CSFB perform for Oakwood as the  
7 underwriter of its ABS transactions.

8 MR. OSNATO: Objection as to the form.

9 You can answer.

10 A. Can you go back over the list that you  
11 went through already?

12 Q. Yeah. Well, I think you've identified  
13 for me that there was the financial engineering --

14 A. Yup.

15 Q. -- stuff.

16 I think you've told me that in the  
17 underwriting process you dealt with the rating  
18 agencies.

19 A. Yup.

20 Q. And I think you've told me that you  
21 dealt with purchasers.

22 A. Yup.

23 Q. And I'm just trying to find out whether  
24 in the course of an underwriting CSFB performed  
25 other services for Oakwood.

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2 Q. Yes.  
3 A. Yes.  
4 Q. And was that something you commonly  
5 did?  
6 A. Absolutely.  
7 Q. And describe for me who --  
8 Was it a certain body of people that  
9 you dealt with, institutional investors or --  
10 A. Yes. There were uniformly  
11 institutional investors. I never had occasion to  
12 deal with a non-institutional investor.  
13 Technically these things are -- can be sold to  
14 non-institutional, but it's really an exclusive  
15 institutional market.

16 Generally speaking, within those  
17 institutions there would be one specific team of  
18 portfolio managers whose job it was to invest in  
19 exactly these kind of securities. In other words,  
20 maybe not just manufactured housing, but more  
21 typically in ABS securities and MBS -- non-agency  
22 insured MBS securities in general. And that would  
23 be the team that you would maintain a dialogue  
24 with.

25 Q. All right. Tell me please in addition

1 Fiachra O'Driscoll  
2 A. I think I've also described the way in  
3 which we would brief the company as to the market,  
4 the market reception, investors response to other  
5 manufactured housing offers, and to the likely  
6 response to the given -- to the particular  
7 instrument in question.

8 And that was the essence of what we  
9 did.

10 Q. All right. Did CSFB have anything to  
11 do with the pricing of the securities offered?

12 A. Absolutely.

13 Q. Tell me about that, please.

14 A. What we would -- what we would do, and  
15 the very essence of what we did in many ways, was  
16 to go out to find investors, to find out at what  
17 level, what the clearing level was for the  
18 securities in question. And how that would really  
19 work would be that you would -- just as you would  
20 really in an equities offering or something of  
21 that sort -- you would work with the sales force  
22 and with other members of the team to see where  
23 people had been purchasing similar securities in  
24 the weeks running up to that.

25 You take your best shot at what an

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1 Fiachra O'Driscoll  
2 appropriate price talk was or price range at which  
3 you could offer these securities at. Then you'd  
4 go out and you would try to -- you'd work with the  
5 sales force to find investors for these  
6 securities. You'd put together essentially a book  
7 in the same sense as an equities offering book of  
8 investors who wished to subscribe to the  
9 transaction.

10 Some of them would come in and say they  
11 will simply invest at whatever the price talk is,  
12 as the euphemism goes in the industry. Some would  
13 have a strong opinion of their own as to what the  
14 right price was at which they would invest.  
15 Usually technically the price itself was a par  
16 price or a near par price. So when I use the term  
17 price in that context what I really actually mean  
18 is the spread on the securities in question.

19 Now, how that spread was measured  
20 changed over time. In the early part of the time  
21 it was almost always spread over treasuries.  
22 Later on it was quoted as spread over LIBOR or  
23 spread over swaps, or even perhaps other things.

24 But when we talk about price talk in  
25 essence what we mean is a security that's going to

1 Fiachra O'Driscoll  
2 briefly touched upon the financial services  
3 advisory contract of August 2002.  
4 With the exception of those three  
5 relationships, in the time that you have been --  
6 the time you were associated with the Oakwood  
7 contact for CSFB was there any other business  
8 relationship between CSFB and any Oakwood company?

9 A. Not to my knowledge.

10 Q. Now, you named a number of other  
11 companies in the manufactured housing area. And  
12 let me preface what I'm about to ask you by saying  
13 I'm not looking for confidential information about  
14 transactions, but I am looking for your own  
15 personal -- what personal experience you brought  
16 to the table when you came to Oakwood. And so I  
17 want to ask rather tailored questions not designed  
18 to go any farther than the way they're phrased.

19 A. Uh-huh.

20 Q. Was Green Tree or Conseco ever a client  
21 of CSFB?

22 A. I know the term client is one that has  
23 a specific legal meaning, can you explain what you  
24 mean by that?

25 Q. Was there a business relationship of

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2 be priced at par. But the coupon that's going to  
3 be set is going to be a function of two things,  
4 one being the level of treasuries or the level of  
5 swap rates. And the second thing, the spread over  
6 treasuries that investors are demanding for such a  
7 security.

8 MR. OSNATO: And can I interrupt for a  
9 second?

10 When you finish this line can we take a  
11 quick break?

12 MR. CASTANARES: We can take a quick  
13 break right now.

14 MR. OSNATO: Okay. Thank you.

15 THE VIDEOGRAPHER: Going off the  
16 record, 10:28, tape 1.

17 (Recess taken.)

18 THE VIDEOGRAPHER: Back on the record,  
19 it's 10:37, tape 1.

20 BY MR. CASTANARES:

21 Q. Mr. O'Driscoll, we have talked about  
22 CSFB's role in the REMIC securitizations for  
23 Oakwood and we have also briefly discussed the  
24 asset purchase facility in early 2001, including  
25 the warrant that was issued. And we also very

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2 any kind between --

3 A. Yes.

4 Q. Describe it, please.

5 A. Very similar to that with Oakwood,  
6 which is that with either of those we both  
7 undertook mortgage securitizations and we also --  
8 we also for Conseco at least provided -- in that  
9 case there was both a direct credit relationship.  
10 In other words, we were participant in their bank  
11 revolving credit facility. And we also provided  
12 to them a reverse repurchase facility akin to the  
13 warehouse, is one of the forms of those type of  
14 warehouse agreements that went in and out of  
15 fashion as I described.

16 Q. All right. And were you personally  
17 involved in those transactions?

18 A. Yes.

19 Q. Okay. When did those transactions  
20 occur?

21 A. At different points in time from 1997,  
22 '98, '99, 2000, 2001.

23 Q. All right. And was CSFB compensated  
24 for its role in those transactions?

25 A. Yes.

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2 Q. Was Consecro in the business of

3 manufactured homes?

4 A. They were not in the business of

5 manufacturing homes, if that's your question.

6 Q. They had acquired this paper from

7 somebody who was in the business of manufacturing

8 homes?

9 A. Consecro Finance was in the business of

10 originating loans through retailers of

11 manufactured homes and accumulating them and

12 securitizing them.

13 Q. All right. And CSFB's role was in one

14 fashion or another monetizing those loans for

15 Consecro?

16 A. Yes.

17 Q. And had you engaged in any of those

18 transactions before 1996 when you first contacted

19 Oakwood?

20 A. Manufactured housing securitizations?

21 Q. For Consecro or --

22 A. For Consecro, yes, we had.

23 Q. And you personally had been involved in

24 those?

25 A. No.

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2 Q. Now, you mentioned B of A/GreenPoint.

3 A. Uh-huh.

4 Q. Was that similar to the Consecro

5 situation, in that they were not manufacturers of

6 home, but they had acquired the paper in some

7 other manner?

8 A. Correct.

9 Q. And you were monetizing that for them

10 in the same way?

11 A. Precisely.

12 Q. Had that occurred prior to your first

13 involvement with Oakwood?

14 A. I had --

15 Can you rephrase your question?

16 Q. Had CSFB participated in any such

17 transactions prior to your --

18 A. I don't believe so.

19 Q. And were you personally involved in

20 such transactions after you became involved with

21 Oakwood?

22 A. Yes.

23 Q. How many such transactions?

24 A. I would need to check. A number.

25 Q. All right. In excess of a dozen?

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2 A. Less than a dozen with GreenPoint

3 specific instances.

4 Q. Okay. And what about

5 United Companies --

6 A. Uh-huh.

7 Q. -- which I think you just said is

8 bankrupt, what was their role in this history?

9 A. They, too, were a lender. They

10 actually had two businesses. One was

11 non-conforming mortgage lending in general on not

12 manufactured homes, but on site-built homes. And

13 also they had a manufactured housing lending

14 operation as well, which worked very similarly to

15 Consecro Finance.

16 Q. All right. So they were not

17 manufacturers, but they were also -- they somehow

18 or other acquired this paper?

19 A. They were a finance company, yeah.

20 Q. All right. And would you explain the

21 term non-conforming as you've used it.

22 A. In other words, a mortgage that because

23 of something about its character makes it

24 ineligible for a purchase by Fannie Mae, or

25 Freddie Mac, or Ginnie Mae, or the FHA, or VA.

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2 Q. Is that typically related to the

3 creditworthiness of the loan itself or is it some

4 other formal characteristic, or something else?

5 A. It can be either of the two.

6 Q. And Bombardier Capital, was it also a

7 lender?

8 A. Yes, exactly.

9 Q. Okay. So similar transaction?

10 A. Very similar.

11 Q. Okay. And how about

12 Clayton/Vanderbilt?

13 A. Clayton was a manufacturer as well as

14 having a finance company.

15 Q. And did its finance company finance

16 home purchases with respect to transactions for

17 other manufactured housing builders or just simply

18 Clayton?

19 A. It -- to be precise, it had a

20 50 percent owned affiliate whose name I -- whose

21 name was 20th Century Mortgage, I think, which

22 would originate paper outside of Oakwood -- sorry,

23 outside of the Clayton retailer network. The

24 paper that was originated by Vanderbilt was done

25 exclusively from Clayton dealers.

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2 Q. All right. And on behalf of Clayton

3 and Vanderbilt were the transactions similar to

4 those that were done for either Oakwood or the

5 other lenders that you've described, or both?

6 A. Almost indistinguishable.

7 Q. Okay. And I take it CSFB was

8 compensated for its role in all these transactions

9 for all of these clients --

10 A. Yes.

11 Q. -- is that correct?

12 A. Yup.

13 Q. Did CSFB have any equity position in

14 any of these companies, ever?

15 A. I don't know.

16 Q. Do you know whether CSFB ever obtained

17 a warrant for an equity position in any of these

18 other companies?

19 A. I don't know. I don't know. It was a

20 form of compensation that was used during that

21 period of time with a number of finance companies

22 in a number of different situations that I can

23 recall. I don't know specifically whether it was

24 with any of those guys.

25 Q. Compensation for what?

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2 A. Usually for the provision of credit

3 services was typically the case.

4 Q. When you say "credit service" do you

5 mean an extension of credit?

6 A. In some shape or form.

7 Q. So it's essentially compensation for

8 the forbearance of money?

9 A. "For the forbearance of money"?

10 Q. Yeah, for the use of money.

11 A. For the provision of money?

12 Q. Yes.

13 A. I think it's probably more useful to go

14 through specific examples.

15 Q. Can you?

16 A. I'm sorry?

17 Q. Can you?

18 A. One example was Conseco, where we

19 didn't have any such arrangement, but

20 Lehman Brothers, for instance, did receive

21 warrants from Conseco Finance at -- I think on two

22 occasions for providing a subordinate debt

23 facility is my recollection was one.

24 Q. Essentially for lending money?

25 A. For some form of credit advance.

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2 anyway. I don't remember the precise details

3 because it's sometime ago. Credit Suisse also did

4 similar things with other people, and damned if I

5 can remember the details at this point.

6 Q. All right. Did you or anybody else in

7 1999 at CSFB have a belief that the

8 manufacturing -- manufactured housing industry had

9 bottomed out and would soon turn around?

10 A. In 1999?

11 Q. Yes.

12 A. 1999 the manufactured housing market

13 was still doing relatively well.

14 Q. All right. Did you at some point come

15 to the conclusion that the industry had bottomed

16 out and would soon turn around?

17 A. Yes.

18 Q. When was that?

19 A. Probably in the summer of 2001.

20 Q. And what led you to that belief?

21 A. There was a period of time in which

22 sales improved for an interval of time,

23 particularly year into year sales. And the

24 downturn, which had really begun in '98 or '99,

25 depending on how you measured it, seemed to be

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2 bottoming out for a period of time.

3 Q. And what period of time was that?

4 How long did it last?

5 A. Specifically, I don't recall. But

6 there certainly was a period of time in 2001 where

7 sales did seem to be improving.

8 Q. Was that more than a quarter?

9 A. You know, I don't recall.

10 Q. And did that seem to be the case across

11 the industry or just in the case of Oakwood or --

12 A. It seemed to be industry wide.

13 Q. So the top line was improving?

14 MR. OSNATO: Objection as to the form.

15 A. What do you mean by "top line"?

16 Q. Revenues.

17 A. Revenues of a specific --

18 Q. Of manufactured housing.

19 A. -- manufactured housing?

20 They appeared to be.

21 These things can be hard to measure

22 because it's a very seasonal business. Not

23 surprisingly, these homes tend to sell more in the

24 summertime than in the wintertime. So by its

25 necessity you're having to make comparisons.

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And also the number of, for instance, stores, dealerships, and so on that a particular company has opened at a particular point in time vary, but trends seemed to be positive in the industry, sales trends specifically.

Q. And sales trends, were these positive sales trends applicable to new product only or to repossessed product only, or both?

A. I -- it was with respect to new sales.

Q. And what was happening at the same time as these positive trends in new sales with regard to repossessions?

MR. OSNATO: Can I interject?

Are we talking about the industry as a whole --

MR. CASTANARES: Yes.

MR. OSNATO: -- still, and not Oakwood specifically?

So address this to the industry.

A. Repossessions were continuing to get somewhat worse.

Q. I'm sorry?

A. Repossessions were continuing to get somewhat worse.

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Q. And did you make any assessment of the reasons for that?

A. The reason, in essence, was because usually you see a degree of pattern to when delinquencies, and defaults, and repossessions occur, or foreclosures occur with really any kind of mortgage product. Which is to say that by its nature when somebody takes out a mortgage they rarely fail to make the first few mortgage payments.

Generally speaking, you know, they've gotten a mortgage because they have a job that's a well-compensated job, they see no reason why it's going to terminate, they don't think that their financial circumstances are going to change. And they've convinced a banker, a lender, a finance company of that. So usually it's only after a period of time in which you actually see the -- you see delinquencies in mortgages start to rise.

Now, of course, that's a fairly statistical business, because by and large most people do make their payments every month. Some people, of course, do not. And what you typically will see is that that percentage of people who

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have failed to make payments in a timely fashion rises over time. And as a consequence, the number of people who become seriously delinquent, to the point where a bank or a finance company chooses to foreclose on the mortgage loan, is something that will rise over time as well.

And by its nature, I think '98 was -- '98 or '99 was the peak year. I don't remember which one of the two it was, but it was around that time that it was the peak year. So by its nature you are going to see some years after that, three, four years after that a peak in repossessions coming off those loans that had been originated in 1998.

Now, the question was whether, you know, whether those -- whether that pattern of repossessions was going to increase, decrease, or stay the same.

Q. And did you reach an opinion on that subject?

A. It was hard to reach an opinion on that subject, and I don't recall reaching an opinion on that subject.

Q. All right. And was Oakwood's

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experience typical of the general industry trends that you've described in both sales of new product and repossessions at about this time or did it differ in any way?

A. It might have done. To be honest, I don't recall specifically in that time interval.

Q. All right. Did you discuss these trends with Oakwood?

A. The -- I'm sure we did.

Q. Did you personally do so?

A. I'm sure I did.

Q. All right. And when you say "we," would there have been somebody else at CSFB that you recall --

A. In other words, Credit Suisse.

Q. Okay.

A. Certainly -- I certainly did at some point in that period of time.

Q. Are you aware of whether anybody else at Credit Suisse --

A. I'm not.

Q. -- did so?

Can you tell me, was it Doug Muir that you talked to about that?

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1 Fiachra O'Driscoll  
2 A. I don't recall a single specific  
3 conversation.  
4 Q. Can you recall any of the discussions  
5 you had?  
6 A. Not with any specificity.  
7 Q. All you can recall is that you did  
8 discuss --  
9 A. That we did have discussions about  
10 that.  
11 Q. But you can't recall anything either of  
12 you said?  
13 A. That was certainly an inevitable topic  
14 of conversation with anybody in the manufactured  
15 housing industry throughout those entire years.  
16 Q. Did the increase in repossessions on  
17 earlier securitizations in any way influence the  
18 practicality, or the feasibility, or the pricing  
19 of continuing new securitizations that were  
20 occurring?  
21 MR. OSNATO: Objection as to the form.  
22 You can answer that in components if  
23 you like or you can try and answer all three  
24 at the same time.  
25 MR. CASTANARES: Yeah, I recognize it's

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2 compound. I'll break it out if you like.  
3 THE WITNESS: Yes, please.  
4 Q. Did the trends in defaults and  
5 repossessions have any effect upon the feasibility  
6 of future securitizations for Oakwood at any time  
7 that you were involved?  
8 A. No.  
9 Q. Did it have any effect upon the  
10 pricing?  
11 A. It had an indirect impact on the  
12 pricing. The rating agencies and, indeed,  
13 investors recognized that the credit standards on  
14 which -- what were called repo refs in the  
15 vernacular -- in other words, refinancing of  
16 repossessed homes -- by their nature would tend to  
17 be somewhat weaker credits. These homes were, of  
18 course, preowned homes. They were by their nature  
19 cheaper homes, which usually would be lent  
20 borrowers on lower -- would be extended to  
21 borrowers on somewhat lower incomes who  
22 statistically tended to have a somewhat higher  
23 probability of default.  
24 And furthermore, they also tended --  
25 there tended to be an industry practice to direct

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1 Fiachra O'Driscoll  
2 a customer who perhaps didn't qualify for a new  
3 home to instead a repo home instead.  
4 So the average credit scores on those  
5 repossessed homes of the borrowers -- of the  
6 borrowers purchasing those repossessed homes, if I  
7 can be precise, tended to be a little bit lower.  
8 So as a consequence, when the rating agencies saw  
9 a pool that had a higher than average or higher  
10 than previous percentage of repo refinances they  
11 tended to -- they tended to require that the  
12 degree of subordination that people owe any  
13 particular tranche, in other words, the degree of  
14 losses that would be absorbed before that tranche  
15 would experience any credit losses, needed to be  
16 somewhat higher.  
17 So what that would do is it would  
18 reduce the amount of AAA securities to be sold  
19 within a transaction and it would increase the  
20 amount of BB, or BBB, or A securities to be sold  
21 in a transaction.  
22 By their nature, the AAA securities  
23 tended to price at a tighter spread than the more  
24 subordinate securities. So even if it didn't  
25 impact the pricing on the individual securities,

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2 the aggregate costs within the securities would  
3 tend to -- of the pieces sold would tend to be  
4 higher.  
5 Q. Did this trend in increasing repo-refi  
6 rates in any way affect -- I'm speaking now of  
7 Oakwood -- in any way affect the amount of credit  
8 enhancement or guarantees that Oakwood would need  
9 to provide for some of the lower tranches?  
10 A. It could. It would cause the B2  
11 tranche, which was the tranche guaranteed at times  
12 during that period of time, to become a larger  
13 tranche as a percentage of the entire transaction.  
14 Q. So the effect would be to increase the  
15 dollar amount of Oakwood's guarantee exposure?  
16 A. Yes. Typically it wasn't a huge  
17 change. It would be a small change, but it would  
18 increase that amount.  
19 Q. Is there any way you could quantify  
20 that for me?  
21 A. It's difficult for me to recall  
22 precisely at this point in time, but it might be a  
23 change such that a -- say a B2 tranche that was  
24 4 percent of the entire transaction might go to be  
25 4 and a quarter percent of the entire transaction.

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It might go to be 4 and a half percent of the transaction, that kind of thing.

Q. All right. We've talked about the packaging together of some of these B2 securities in the --

THE WITNESS: Thank you.

Q. -- Berkshire transactions that we've talked about before the break.

A. Yeah.

Q. Was CSPB making any effort to sell the B2 securities or was Oakwood intentionally holding onto those?

A. No. We were making efforts to try to sell the B2s.

Q. And to what extent had those efforts been successful on prior securitizations before Oakwood's bankruptcy?

A. Up until Oakwood lost its investment grade rating, generally speaking we were able to sell those B2 securities fairly readily and without any difficulty. From that date onwards, which was I think late 2000, it became more difficult to sell it. In part, because of the rising -- the fall in sales in the industry and

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security on your balance sheet, instead you would have an interest within the securitization itself that would be a highly illiquid interest that you would need to package up in some shape or form before you could find an institutional buyer for it.

Q. Well, if you didn't offer the B2 securities at all you would basically continue to hold the mortgages; is that correct?

A. No, not quite.

Q. Oh, okay. Please tell me how I'm wrong.

A. If you, for instance, have a REMIC, a REMIC trust of the form in which these things were securitized typically, there is usually some component at the very bottom of the transaction that the company retains. In most of these transactions it was simply the excess interest within the transaction. In other words, the difference between the coupon rate on the securities themselves and the weighted average coupon rate on the securities that were sold to the investor community.

On some transactions as well there was

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the rising number of repossessions in the industry, and then in part because Oakwood had lost its investment grade rating.

Q. And at some point did it become basically impossible to sell those?

A. We were on occasion successful, but overall Oakwood was generating more B2s from its securitizations than we were able to find buyers for it.

Q. And did Oakwood continue, nonetheless, to attempt to sell these B2 securities or did it ever -- strike that. Let me ask a better question.

To your knowledge, did Oakwood ever consider simply not offering the B2 securities as part of the securitizations?

A. From their perspective it really wasn't an option. Because if you didn't offer the B2 securities, then you would effectively have to hold on to what would be implicitly the component within the securitization itself.

So in effect all you would be doing was -- if you didn't kind of create and offer these securities, instead of having a B2 as a

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what was called overcollateralization. And that would be where there was an element in the transaction structure below the lowest security, which was also not sold to investors. Now, by its nature, if you have \$500 million of mortgage loans and you sell \$450 million of securities you're only getting \$450 million in for what you've lent -- you know, you've lent out \$500 million out the door. So the net result is you're \$50 million out of pocket.

Now you can either do it in that form in such a way that you've got a very large overcollateralization piece or alternatively you can turn part of that overcollateralization piece into a B2 security, as we're kind of calling it B2s here for purpose of the exercise. They were called various things, but that was the name most typically used for them in the Oakwood program.

And the only real difference between the two is if you had a B2 on your books then you could in principle simply take that B2 security and sell it to an institutional investor who came along on a particular date. And, indeed, that did happen on a number of occasions.

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If you instead had constructed the

PFMIC such that you had \$500 millions of loans in the REMIC and you'd only sold \$450 million of securities, you're \$50 million out of pocket every time we do a securitization.

Q. I'm a little -- a bit confused by this. I'm just going to ask you to clarify.

In either case you're selling the \$500 million space for 450; is that correct?

A. The distinction between the two situations is, in the first situation where you've got the \$50 million overcollateralization piece, it will be relatively difficult to monetize that top piece within the transaction. Because generally speaking you're not going to get an institutional investor who's going to come along and simply purchase an interest in such a instrument that does -- that isn't in the form of a security.

If you instead create a B2 security, even if you can't sell it immediately, then you've got something that you can within two to three business days sell to an investor who is prepared to purchase the instrument in question.

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Q. What advantage does a company like Oakwood derive at all from selling \$500 million worth of something for 450 million?

A. It's -- from Oakwood's perspective, it's better than selling it for nothing or simply holding onto it.

Q. Why is it better than holding onto it?

A. Because if Oakwood -- Oakwood was still going to need to finance its loan production in some way. During the period of time -- I've forgotten the total loan originations of Oakwood, but I'm going to assume it was 3, 4, \$5 billion, somewhere in that ballpark area. So the total outstandings under the REMIC at any given point in time, let's call it 4 billion for the sake of argument.

If Oakwood had -- Oakwood's choices in principle were to sell the loans on a flow basis, which was not really practical for the reasons that I mentioned, which was that generally speaking it was only possible to sell those loans at a fairly steep discount to face.

The second alternative was to go the securitization route, which I think we've

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discussed.

And the third alternative was to hold those loans on its balance sheet and to go out and to negotiate, probably from banks, other financial institutions, but typically banks, what would have been a very, very large credit facility of the order of \$3 billion to finance all of its underlying loan production.

Q. What was the disadvantage of the third alternative?

A. The disadvantage of the third was that for a company that was rated investment grade, but only barely investment grade, it wouldn't have been possible for them to get financing from banks for a \$3 billion credit line.

Q. Just for creditworthiness reasons?

A. Part creditworthiness and part just sheer size. Like the size of that relative to the size Oakwood, which was sure a substantial corporation, you know, \$2 billion market cap at the peak, 9,000 employees, it was a fairly big corporation. But \$3 billion even today, and certainly during that period of time, was an enormous credit line.

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Q. What -- once Oakwood lost its investment grade rating what percentage of the B2s and securitizations thereafter was CSFB able to sell in the initial offerings?

A. We sold some and we didn't sell others. I'm not sure I can recall a percentage.

Q. Can you quantify it for me at all?

A. We did sell some.

Q. Okay. You can't tell me whether it was 10 percent or 90?

A. It would have been closer to 10 than to 90.

Q. Okay. And what kind of records would show that?

A. I don't know.

Q. You were not involved in the actual sales of these instruments?

A. I typically would have been, but I'm trying to think what -- what records -- what records there would be.

Q. You just can't think of them?

A. And I can't think of them, that would be correct.

Q. All right. Now, did your belief in

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1 Fiachra O'Driscoll  
2 mid-2001 that the industry had bottomed out and  
3 would soon turn around prove to be correct?  
4 A. Can you repeat the question again?  
5 Did you say 2002?  
6 I think you said 2002, didn't you?  
7 Q. I believe you said 2001, did you not?  
8 A. 2001, yeah. I thought you said 2002  
9 there.  
10 MR. OSNATO: Why don't we just --  
11 MR. CASTANARES: Let me start with a  
12 clean question.  
13 THE WITNESS: Shall we go again?  
14 Q. Did the belief that you held in  
15 mid-2001 that the manufactured housing industry  
16 had bottomed out and would soon turn around prove  
17 to be correct?  
18 A. That wasn't my belief.  
19 Q. Have I misunderstood something you said  
20 earlier?  
21 A. No. You've put words into my mouth,  
22 respectfully.  
23 Q. All right. Let me start again then  
24 with where I thought we were a few minutes ago.  
25 Was there ever a time in the -- after

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2 1999 where you believed that the manufactured  
3 housing industry had bottomed out and would soon  
4 turn around?  
5 A. What I did believe was that there was a  
6 clear period in 2001 where sales were improving.  
7 I'm not sure that I ever went as far as believing  
8 that necessarily it had bottomed out.  
9 Q. All right. Are you aware of whether  
10 anybody else at CSFB believed that the industry  
11 had bottomed out at any time after 1999?  
12 A. I am not.  
13 Q. Okay. Now, in your deals with the  
14 rating agencies in the underwriting function for  
15 Oakwood, were you communicating information to  
16 them regarding the creditworthiness of any Oakwood  
17 entity itself as distinguished from information  
18 about the securities or collateral in the pool?  
19 A. I would think not. That wasn't the  
20 role.  
21 Q. Did the B2 tranches get rated?  
22 A. Yes.  
23 Q. And in the course of the rating was the  
24 guarantee a subject of discussion in the rating  
25 and pricing process?

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2 A. Can you --  
3 By whom?  
4 Q. Between you and the rating agency or  
5 between you and purchasers.  
6 A. As a general rule the rating agencies  
7 had two teams internally. They had a team that  
8 focused on the rating of mortgage securitization  
9 products of one sort, quite a large team, and they  
10 had a separate team that dealt with the rating of  
11 corporate -- corporations.  
12 The mortgage securitization team within  
13 all three, Moody's, S&P, Fitch, would when there  
14 was a guaranteed security, would deal internally  
15 with their own people on the corporate side to  
16 determine what the rating of the B2 securities was  
17 going to be. If there was a guarantee put around  
18 it, I think in every instance the guarantee was  
19 the same as the general senior unsecured -- was  
20 rated the same as the senior unsecured rating of  
21 Oakwood Homes.  
22 Q. Okay. So if --  
23 Am I correct to infer from what you've  
24 told me that you don't recall having any  
25 discussion with any of the rating agencies

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1 Fiachra O'Driscoll  
2 specifically on the creditworthiness of Oakwood?  
3 A. I don't recall any discussions.  
4 Q. And did you have any such discussions  
5 with any purchasers or potential purchasers?  
6 A. On occasion I'm sure I did. I don't  
7 recall any specific instances.  
8 Q. Can you recall whether you provided any  
9 kind of written information to such parties at any  
10 time?  
11 A. I provided written information to  
12 parties at different points in time.  
13 Q. To potential purchasers?  
14 A. Yes.  
15 Q. And can you recall whether you provided  
16 any information to them about the creditworthiness  
17 of Oakwood or any of the companies in its family?  
18 A. I cannot recall.  
19 Q. Okay. Did you communicate with the  
20 rating agencies at any time on Oakwood's two  
21 issuances of notes?  
22 A. Oakwood's?  
23 Q. Two note issuances or bond issuances.  
24 A. Two bond issuances?  
25 We were not part of those transactions.

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1 Fiachra O'Driscoll

2 Q. So you didn't communicate with the

3 rating agencies about them?

4 A. Nope.

5 Q. Now, was there more than one

6 underwriter involved in any of the REMIC

7 securitizations that you were involved in with

8 respect to Oakwood?

9 A. Yes.

10 Q. Was that true of all of them?

11 A. Almost all.

12 Q. Okay. Right up to the end?

13 A. Right up to the end. I think there

14 was -- there were at least two that were solely

15 Credit Suisse. Other than that, it was typically

16 the case that there was more than one.

17 Q. Okay. In the situations in which there

18 was more than one what was the respective role of

19 the participants in the underwriting?

20 A. On occasion we would be designated the

21 lead underwriter. On occasion the -- one or more

22 of the other broker-dealers would be designated

23 the lead underwriter.

24 Q. Okay. And what does the lead

25 underwriter do that the others don't?

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2 A. The lead underwriter typically takes

3 the lead in putting together the transaction, its

4 form, working with the rating agencies, working

5 with both the underwriter's counsel and with

6 Oakwood's counsel on preparing the transaction

7 documents, all of the pieces that I have

8 described.

9 Q. And what do the other ones who are not

10 the leads do?

11 A. The other ones would focus on the

12 selling of the securities themselves, at which all

13 of the banks would be expected to participate.

14 And would also be jointly liable to purchase any

15 of the securities that they had agreed to purchase

16 if they couldn't find buyers for them.

17 Q. All right. And was that feature part

18 of all of the underwritings you did, that is to

19 say a commitment to purchase facilities you

20 couldn't find -- I'm sorry, purchase securities

21 you couldn't find buyers for?

22 A. Not all.

23 Q. Okay. Were there some underwritings in

24 which there was no such commitment given to

25 Oakwood?

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2 A. I believe that's correct.

3 Q. And did the -- was there a trend over

4 time in whether or not there would be such a

5 commitment given, for example, or if you

6 understand my question?

7 A. Yeah, I do.

8 And I don't think so.

9 Q. Okay. So it wasn't just the ones at

10 the end where you didn't get that kind of

11 commitment?

12 A. I think in 1998 as well, you know,

13 right after the Russia crisis there was similarly

14 a period of time when we did it on what's called

15 in the industry a best efforts basis.

16 Q. Okay. The what crisis?

17 A. The Russia crisis.

18 Q. What did the Russia crisis have to do

19 with manufactured housing securitizations?

20 A. One may well ask.

21 In the fall of -- people

22 euphemistically call it the Pussia crisis, but in

23 truth it was more the long-term capital management

24 crisis in reality.

25 Do you recall the failure of LTCM, the

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2 big hedge fund?

3 Q. I read about it in the newspapers.

4 A. Which precipitated a sharp dislocation

5 in the securities markets in general for a period

6 of a few months directly after that.

7 Q. Aside from -- well, let me -- let me

8 start a question differently.

9 In a transaction where there is no

10 commitment given to purchase securities you can't

11 sell, and speaking of the transaction between CSFB

12 and Oakwood, what risk, if any, did CSFB take as

13 an underwriter?

14 A. In the transactions where we didn't

15 give a commitment of that sort?

16 Q. Correct.

17 A. Well, essentially the distinction is

18 that we -- by doing that we were declining to act

19 as an underwriter. In other words, we were simply

20 acting as an agent seeking to place the

21 securities, but not providing a commitment to

22 purchase those in the event that we couldn't find

23 a buyer for the securities in question.

24 Q. So is the answer to my question zero?

25 A. No.

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1 Fiachra O'Driscoll  
2 Q. Okay. What risk did CSFB undertake in  
3 these transactions?  
4 A. Well, was -- there would have been --  
5 there would still have been a legal document with  
6 reps and warranties, and so on.  
7 Q. Made by the underwriter?  
8 A. Between the underwriter and the  
9 institution in question. But from an economic  
10 point of view it was obviously a very weak  
11 commitment.  
12 Q. Right. What economic risk --  
13 If CSFB wasn't guaranteeing to buy  
14 unsold securities what economic risks, if any, was  
15 CSFB undertaking?  
16 A. You were taking none.  
17 Q. And in those transactions where CSFB  
18 did agree to purchase unsold securities was its  
19 economic risks -- was its economic risk simply  
20 that or was there any additional economic risk?  
21 A. I'm not sure I understand your  
22 question, sir.  
23 Q. Well, okay. I think you've told me  
24 that where CSFB didn't guarantee to buy unsold  
25 securities it took zero economic risk.

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2 A. Uh-huh.  
3 Q. Okay. So in those situations where it  
4 did guarantee to buy certain unsold securities,  
5 aside from that risk were there any economic risks  
6 to CSFB in those transactions?  
7 A. I follow you. I think that was the  
8 nature of the economic risk.  
9 Q. All right.  
10 A. No.  
11 Q. Was there any difference in the  
12 compensation package that CSFB received in these  
13 transactions depending on whether it took that  
14 economic risk or not?  
15 A. You know, I don't recall.  
16 Q. Did you personally participate in any  
17 negotiations of CSFB's compensation for acting in  
18 the role it acted in in any of these  
19 securitizations?  
20 A. Yes.  
21 Q. Did you do so in all of them?  
22 A. Probably.  
23 Q. Did those negotiations happen on an  
24 individual securitization basis, term by term, or  
25 was it pretty much the same deal as the last time?

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2 A. It was frequently the same deal as the  
3 last time. But from time to time it would not be  
4 the same as the last time. So on occasion it  
5 would be literally whatever it was the last time,  
6 does that still work for everybody?  
7 On other occasions the company would  
8 come to us and say, you know, we believe that  
9 these deals are getting somewhat easier. We think  
10 that Conseco is paying a little bit less for its  
11 services, will you reduce your fees to match what  
12 we see over there?  
13 Q. Do you recall that that specific event  
14 actually occurred?  
15 A. I recall that that did occur. I don't  
16 recall the dates or the specific securitizations  
17 to which it relate, but it certainly -- I do  
18 recall having gone through that conversation on a  
19 number of occasions.  
20 Q. Okay. And did CSFB provide that  
21 accommodation?  
22 A. We certainly negotiated to a  
23 satisfactory fee.  
24 Q. All right. I think you've given me a  
25 brief description of some of the structure in

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2 tranches of securitizations that's been done. And  
3 the question -- I want to confine this question to  
4 this.  
5 If we looked at the structure of the  
6 tranches in the Oakwood securitizations, is that  
7 typical of structures of ABS transactions  
8 generally, or is this done on an  
9 industry-by-industry basis, or is it done on a  
10 company-by-company basis?  
11 Can you enlighten me on that?  
12 A. The nature of the securities that  
13 Oakwood was offering were very, very similar to  
14 those offered by the other manufactured housing  
15 securitizers, and generally actually pretty  
16 similar to those offered by non-conforming  
17 mortgage securitizers generally.  
18 Q. All right. Was the -- were the  
19 characteristics of the B2 securities similar to  
20 most other ABS transaction?  
21 A. They were certainly very similar to  
22 other manufactured housing transactions.  
23 Q. Okay. And were they similar in respect  
24 of the amount of the guarantee given?  
25 A. Yes.

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Q. Were they similar in the amount -- in respect of the amount of guarantee given to a similar tranche in other ABS transactions outside the manufactured housing industry?

A. They were much more common in the manufactured housing area than they were in other areas.

Q. Why is that?

A. Quite frequently you would be able to -- in, for instance, a subprime mortgage transaction, where for substantial periods of time interest rates were a great deal higher than they were in the manufactured housing space, for instance, you -- the rating agencies would take into account the ability of that excess spread. In other words, the difference between the coupon rate on the underlying loans and the coupon that you're paying out to the investors in each of the securities. Take that excess spread and apply that to absorb the losses that might occur from repossessions, the liquidation of repossessions, and so on.

So having a thicker cushion, as you actually did for substantial periods of time,

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meant that you could very frequently on a non-performing mortgage transaction get a bottom piece rated in the transaction that was rated investment grade, without the benefit of a guarantee. And that would go maybe not right to 100 percent, but it would get you to maybe 99 percent, or 99 and a quarter, or 98 and a half, or somewhere into that ballpark area.

So the net result is that many of these -- many of the kind of non-conforming mortgage lenders that Oakwood was effectively competing with, in the sense that while it was selling manufactured homes, these guys were financing the sale of site-built homes. Many of them had the advantage that they could get 99 cents on the dollar, give or take, out of a transaction where Oakwood could only really get 95, for instance, by virtue of that difference in the interest rates in one sector of the housing market versus in the other sector of the housing market.

Frankly, as well, while quite a few of the companies -- most of the major companies in the manufactured housing industry were investment

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grade during much of that period of time, many of the non-conforming mortgage lenders were actually not. So they didn't necessarily have the -- have a guarantee that was as readily monetized and as well understood as the investment grade guarantee that Oakwood, and Clayton, and Conseco, and the Associates, Associates Financial, was able to put in these transactions.

Q. What explains the effect of Oakwood's loss of investment grade status on future securitizations, given that Oakwood was not guaranteeing anything higher than the B2 tranche?

A. Can you rephrase your question?

I'm not sure I follow.

Q. Okay. If Oakwood itself wasn't guaranteeing the higher tranches than B2 why did its loss of investment grade status have any effect on those non-guaranteed tranches?

A. It didn't.

Q. So its loss of investment grade status didn't have any effect on your ability to sell out the tranches higher than B2 on future securitizations?

A. We were able to sell the tranches that

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were not guaranteed, the tranches above the guarantee, if you will. I won't say not without difficulty, because on occasions like in the fall of 1998, you know, after the Russia crisis, LTCM crisis, et cetera, et cetera, I think there were some delays. But by and large, you know, you were able to sell the pieces that weren't dependent on the guarantee.

Q. And that continued to be the case after Oakwood's loss of investment status?

A. Yes.

Q. Investment grade status?

A. Yup.

Q. In the course of your involvement with Oakwood did you notice any trends in loan underwriting standards by either sellers or financiers of the manufactured housing transactions, either at Oakwood or in the industry generally?

A. Yes.

Q. Describe them for me, please.

MR. OSNATO: If I can interrupt, if you can do it in pieces because the question is really calling for two answers. You can

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2 start if you'd like with Oakwood or the  
3 industry, but make sure your answer is clear  
4 as to which you're referring to.  
5 A. It's a fairly long period of time, so  
6 my apologies if my answer is somewhat general.  
7 But by and large from the -- from the time at  
8 which I would have got involved in the very -- in  
9 the first securitization for Oakwood that I worked  
10 on, credit standards were generally improving.  
11 Q. From the beginning till the end?  
12 A. Pretty much actually, yeah.  
13 Q. And when you say "improving" you mean  
14 they were tightening?  
15 A. In other words, yes. Higher credit  
16 standards were applied to the underwriting of the  
17 securities in question -- of the loans in  
18 question.  
19 Q. And this was true --  
20 Was this true of Oakwood?  
21 A. And this was true of Oakwood and of  
22 other people as well.  
23 Q. True throughout the industry?  
24 A. Yes.  
25 Q. And this continued through '99, 2000,

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1 Fiachra O'Driscoll  
2 and up until Oakwood's bankruptcy?  
3 A. Right till the bitter end.  
4 MR. CASTANARES: We need to change the  
5 videotape, so...  
6 THE WITNESS: So I see.  
7 MR. OSNATO: Five minutes?  
8 THE VIDEOGRAPHER: Going off the  
9 record --  
10 MR. CASTANARES: Do you want to take  
11 five?  
12 MR. OSNATO: Yeah, if you wouldn't  
13 mind.  
14 MR. CASTANARES: Not at all.  
15 THE VIDEOGRAPHER: Off the record,  
16 11:24. This is the end of tape 1.  
17 (Recess taken.)  
18 THE VIDEOGRAPHER: Back on the record,  
19 it's 11:32. This is tape 2.  
20 BY MR. CASTANARES:  
21 Q. Mr. O'Driscoll, did CSFB ever make any  
22 analysis of the effect of the REMIC  
23 securitizations on Oakwood's long-term liquidity?  
24 A. Not to my knowledge.  
25 Q. Did it ever make any analysis of the

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2 effect of the B2 guarantees on Oakwood's long-term  
3 liquidity?  
4 A. Not to my knowledge.  
5 Q. Did CSFB ever attempt to place a value  
6 on the Oakwood exposure to the guaranteed B2s?  
7 A. I don't know.  
8 Q. Did CSFB ever make any effort to  
9 evaluate the REMIC securities that Oakwood held?  
10 A. Yes.  
11 Q. Did it do so on more than one occasion?  
12 A. I believe so.  
13 Q. Were you involved in it in any way?  
14 A. Yes.  
15 Q. Was anybody else?  
16 A. I don't recall.  
17 Q. What did you do?  
18 A. Well, what we were specifically asked  
19 for on occasions was for some of the securities  
20 that were on Oakwood's books, to -- which they  
21 needed to have market valuations on for accounting  
22 purposes primarily. We were asked to provide  
23 valuations for those.  
24 Q. All right. Can you recall when that  
25 first such occasion occurred?

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2 A. I can't, actually.  
3 Q. And can you recall how many such  
4 occasions it occurred?  
5 A. I can't, but more than one.  
6 Q. And did you comply?  
7 A. Yes.  
8 Q. What process did you go through to make  
9 that analysis?  
10 A. We valued the securities against  
11 similar securities in the market, taking account  
12 of the ratings, the nature of the instruments,  
13 treasury rates, swap rates, LIBOR rates,  
14 et cetera, et cetera. And the market clearing  
15 spreads or what we thought in our judgment was the  
16 market clearing spreads by comparison with the  
17 actual coupon on the security itself.  
18 Q. Do I take it there was not a sufficient  
19 amount of trading of these securities in the open  
20 market to reach conclusions that way?  
21 A. These -- for the retained securities,  
22 that's correct.  
23 Q. Were you ever aware of a request by the  
24 company's auditors that it obtain an independent  
25 valuation of the retained securities?

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2 A. No.

3 Q. I'm sorry, did you say --

4 A. No.

5 Q. Okay. Were you ever aware of any

6 statement or discussion by any Oakwood person to

7 the effect that he or she believed it would be a

8 good idea to get an independent evaluation of

9 those securities outside of CSFB?

10 A. What do you mean by "an independent

11 evaluation," do you mean a valuation or an

12 evaluation?

13 Q. I guess I was using the term, you know,

14 interchangeably --

15 A. Interchangeably.

16 Q. -- perhaps I was wrong in doing so.

17 Independent valuation is what I was --

18 A. As part of the financial advisory

19 assignment that began in August of --

20 What was the date?

21 -- August of 2002 --

22 MR. OSNATO: Correct.

23 A. -- if my memory serves. One of the

24 things that we actually did was we actually found

25 an outside valuation agent whose role it was to

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2 evaluate specifically the value of the B2

3 guarantee, the guarantee independently of the

4 value of the securities themselves.

5 Q. All right. So this, rather than being

6 the value of the guarantee, this is the present

7 value of Oakwood's exposure on those guarantees;

8 is that correct?

9 A. I believe that's correct.

10 Q. Okay. This was not an evaluation, such

11 as one would make of a security, but of a

12 liability; is that right?

13 A. Just so.

14 Q. And had CSFB been performing that role

15 for Oakwood before Andrew Davidson got involved in

16 it?

17 A. No.

18 Q. Do you know how Oakwood had arrived at

19 the figures that it carried that exposure for on

20 its financial statements before Andrew Davidson

21 did this work?

22 A. I do not.

23 Q. Do you have any knowledge of why

24 it was that the latest figure before the

25 Andrew Davidson work showed that at \$75 million.

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2 but Andrew Davidson comes in two months later with

3 133 to 170 million?

4 A. I do not.

5 Q. Did you participate in

6 Andrew Davidson's work in any way?

7 A. I did not.

8 Q. Did somebody else from CSFB do so?

9 A. We supplied information to

10 Andrew Davidson about the securities, the list of

11 the securities, the documents themselves, the -- I

12 think some of the financial models and information

13 of that sort.

14 Q. And who did that on behalf of CSFB?

15 A. I don't recall, to tell the truth.

16 Q. Did CSFB, to your knowledge, engage in

17 any role of supervising, or monitoring, or

18 assisting Andrew Davidson in running its models?

19 A. On the contrary.

20 Q. When you say "on the contrary," what do

21 you mean by that?

22 A. Absolutely not.

23 Q. Did CSFB personnel have any role in

24 working with Andrew Davidson on the modeling that

25 it was doing?

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1 Fiachra O'Driscoll

2 A. Yes.

3 Q. What was it?

4 A. At least one of the members of the

5 financial engineering group -- and I don't recall

6 which one -- worked with Mickey Storms, who was

7 one of Andrew Davidson's associates, to gather

8 information to clarify information and I think to

9 get access to what are called in the industry

10 Intext models. In other words, financial models

11 of REMICs that are provided on a -- how would --

12 well, I guess a database by a company called

13 Intext, who is kind of the mortgage industry

14 standard for how you exchange information on the

15 modeling of these kind of deals.

16 Q. All right. And I think you said this

17 person was a financial engineer.

18 A. Yes.

19 Q. Somebody that worked at your group?

20 A. Well, no. Do you remember I --

21 You're trying to catch me out here,

22 aren't you?

23 Q. No. I'm trying to find out what group

24 he worked for.

25 A. I mean...

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1 Fiachra O'Driscoll  
2 MR. OSNATO: Provide whatever  
3 clarification you need.  
4 A. You may recall back I described this  
5 gentleman, Howard Dent, who was long gone by this  
6 stage of the proceedings, but his role was within  
7 that financial engineering team. And their -- the  
8 financial engineering team was the team that you  
9 went to with assignments or projects of that sort.  
10 And they were at -- as I think I mentioned earlier  
11 on, they had a kind of an independent career  
12 hierarchy of their own.  
13 Q. All right. And they weren't part of  
14 your ABS group?  
15 A. They were not part of my ABS group.  
16 correct.  
17 Q. What was the name of the group they  
18 belonged to?  
19 A. It was called -- generally it was just  
20 called financial engineering.  
21 Q. Okay. It wasn't part of Mr. Felt's  
22 group, either?  
23 A. No.  
24 Q. And do you know whether anybody in  
25 Mr. Felt's group had any interface with

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1 Fiachra O'Driscoll  
2 Andrew Davidson of any kind with respect to the  
3 modeling?  
4 A. I do not.  
5 Q. And do you remember the name of the  
6 financial engineering person who did so with  
7 Andrew Davidson?  
8 A. I don't.  
9 Q. Now, in the course of the ABS  
10 securitizations that you did for -- or that CSFB  
11 underwrote for Oakwood, were any new entities  
12 created by any party?  
13 MR. OSNATO: Objection to the form.  
14 A. Can you break it down into shorter --  
15 What do you mean by --  
16 Well, can you break it down into  
17 smaller than "any party" and any period of time.  
18 It's a very long period of time. There  
19 are many parties and it's probably easier to  
20 refresh my recollection if we break it down a bit.  
21 Q. Can we speak of the period of around  
22 2001, 2000, 2001, 2002 as a --  
23 A. Yup.  
24 Q. -- is that a time frame that works for  
25 you?

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1 Fiachra O'Driscoll  
2 A. Sure.  
3 Q. In the typical securitization, REMIC  
4 securitization, did Oakwood create a new entity of  
5 any kind?  
6 A. Yes.  
7 Q. Did CSFB create a new entity of any  
8 kind?  
9 A. No.  
10 Q. Did any other party create a new entity  
11 of any kind?  
12 A. Yes.  
13 Q. Who else?  
14 A. Typically the attorneys would do it.  
15 Q. The attorneys for Oakwood?  
16 A. For Oakwood.  
17 Q. Okay. So -- I know that Oakwood acted  
18 through its attorneys in doing this.  
19 Did any other party to the transaction  
20 create a new entity beside Oakwood through its  
21 attorneys?  
22 A. Generally not.  
23 Q. On some occasions did that happen?  
24 A. It might have done. I'm not sure.  
25 Q. All right. And what was the

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1 Fiachra O'Driscoll  
2 function -- strike that.  
3 In the typical transaction at that time  
4 frame did Oakwood create more than one new entity?  
5 A. Sometimes yes, sometimes no.  
6 Q. What function or functions did this or  
7 these new entities have in the securitizations?  
8 A. You'll forgive me here because I'm --  
9 you're asking me, actually, a legal question. I'm  
10 going to try to give you a layman's answer to it.  
11 Q. Fine.  
12 A. So you'll hopefully bear with me if I  
13 don't get it quite right.  
14 Q. Let me rephrase the question.  
15 What economic function did these  
16 entities have?  
17 A. The entities were there to hold the --  
18 to hold the mortgages or alternatively to pass on  
19 the mortgages to another entity that would then  
20 hold the mortgages. And that ultimate entity  
21 which then held the mortgages would then -- would  
22 then issue the securities in question, the  
23 so-called REMIC securities that were sold to a  
24 variety of other people.  
25 But very often there would be actually

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1 Fiachra O'Driscoll  
2 kind of a daisy chain of an entity that purchased  
3 the loans from Oakwood, or from the warehouse, or  
4 from the loan purchase facility, or whatever was  
5 the particular source of funding at that point in  
6 time, would have no function other than to pass  
7 them on to the trust. Sometimes there was another  
8 intervening entity that would hold the securities  
9 that were issued by the trust and then distribute  
10 those out to the investors.

11 But in essence it was to purchase the  
12 securities and either pass them on to another  
13 entity or hold the securities and issue the  
14 REMIC -- sorry, hold the loans and then issue the  
15 REMIC securities.

16 Q. Where did these entities get the money  
17 to purchase the securities?

18 A. From the issuance of the securities  
19 themselves.

20 Q. So it basically all happened  
21 simultaneously?

22 A. Just so.

23 Q. That was, the buyers of the REMIC  
24 securities put in their money and that money  
25 flowed through to these entities, which then used

1 Fiachra O'Driscoll  
2 Some were corporations, some were  
3 trusts.  
4 Q. All right. Do you know if these  
5 entities had any business other than acting in the  
6 capacity you've described?

7 A. Some would, some wouldn't.

8 Q. Okay. Are you aware of entities that  
9 acted in this capacity that had an additional  
10 business of some sort?

11 A. There were -- yes.

12 Q. Describe that for me, please.

13 A. There was at least one, which was a  
14 Nevada entity, which had an ongoing existence.  
15 And I think actually had some sort of physical  
16 presence in Nevada as well.

17 Q. All right. And was it usually --

18 A. I'd need to look at the documents to  
19 refresh my recollection.

20 Q. Did it have some business, other than  
21 acting in this capacity in securitizations or was  
22 it -- is it just simply the case that it was used  
23 on more than one occasion?

24 A. It did hold securities from time to  
25 time.

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1 Fiachra O'Driscoll  
2 them to purchase them from Oakwood, or the  
3 warehouse, or asset purchase facility, wherever  
4 they were coming from?

5 A. Precisely.

6 Q. Okay. And it was basically handled  
7 like a simultaneous escrow type transaction?

8 A. Exactly.

9 Q. Do you know whether these entities  
10 issued stock?

11 A. Some would, some wouldn't.

12 Q. Okay. What influenced that, if you  
13 know?

14 A. Legal form.

15 Q. Okay. Do you know whether they ever --  
16 whether they had offices?

17 A. Some of them would have had offices,  
18 some of them wouldn't have had offices.

19 Q. And what influenced that, if you know?

20 A. Legal form.

21 Q. Okay. Did they have officers and  
22 directors?

23 A. Some would, some wouldn't.

24 Q. Did they hold meetings?

25 A. Some were corporations -- I don't know.

1 Fiachra O'Driscoll  
2 Q. And was it an Oakwood subsidiary, or  
3 sister, or something in the Oakwood family?

4 A. I -- it was something in the Oakwood  
5 family.

6 Q. Not something that CSFB held any  
7 interest in?

8 A. Correct.

9 Q. Do you know who ran these companies?

10 A. No.

11 Q. Did you ever speak to anybody that  
12 purported to speak on behalf of those companies?

13 A. I don't recall.

14 Q. Do you know what those companies did  
15 with the revenues?

16 A. Can you be more specific.

17 Q. What did they do with the money they  
18 got in these securitizations?

19 A. Typically they were using them to --  
20 they were using the money that they got from the  
21 securitizations to purchase the loans that  
22 actually went into them.

23 Q. Okay. Did you have any understanding  
24 as to whether they had any discretion to spend any  
25 money that they received on anything other than

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1 Fiachra O'Driscoll  
2 that?  
3 A. Some of them may have done, some of  
4 them may not have done.  
5 Q. And you just don't know?  
6 A. I don't know.  
7 Q. Did CSFB ever model future cash flows  
8 with respect to any given securitization?  
9 A. Yes.  
10 Q. Did it do so with respect to every one  
11 of them?  
12 A. Yes.  
13 Q. Did it share that information with  
14 Oakwood?  
15 A. On occasion, yes.  
16 Q. What influenced whether it would or  
17 would not share it?  
18 A. Usually there'd be some specific  
19 request or some specific need. I'm not sure I can  
20 recall any specific instances, but I certainly do  
21 recall occasions when we would share the cash  
22 flows with the company.  
23 Q. What was CSFB's purpose in modeling  
24 future cash flows of these securitizations?  
25 A. Primarily to give investors a better

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1 Fiachra O'Driscoll  
2 understanding of the securities that they were  
3 considering purchasing.  
4 Q. What was --  
5 Other than information that it received  
6 from Oakwood, did CSFB have any other source of  
7 information for modeling these cash flows?  
8 A. I don't think so, no.  
9 Q. Did you have any understanding that in  
10 the securitizations that you did for Oakwood some  
11 Oakwood entity would have responsibilities as a  
12 servicer?  
13 A. Yes.  
14 Q. Describe what you understood, please.  
15 A. Part of the essential process of  
16 dealing with any -- any pool of mortgages is the  
17 need to actually service the payment on that  
18 collection of mortgages. And what that means --  
19 really, in a sense a collection of loans. And  
20 what that means in essence is doing a number of  
21 different tasks. The first and the simplest is  
22 that investors -- sorry, borrowers need somewhere  
23 to send their monthly payments, and to send their  
24 payments more generally.  
25 Often that was actually handled by a

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1 Fiachra O'Driscoll  
2 lock box arrangement. Most of the time that was  
3 handled by First Union, who was the company's  
4 commercial bankers through most of that period of  
5 time. Sometimes I think it wasn't handled by  
6 First Union, but I think the bulk of the time it  
7 was a First Union lock box.  
8 But then those payments would be taken  
9 and information would be gathered on those  
10 payments and it would be forwarded to the servicer  
11 in question. Now if all of the payments for any  
12 of the loans for the payments were being made in a  
13 timely fashion, then you had no issue.  
14 With borrowers who hadn't made their  
15 payments in a timely fashion, then what the  
16 servicer would do is to attempt to contact the  
17 borrower by telephone, by letter, by personal  
18 visit sometimes. If they couldn't get ahold of  
19 them by telephone or by -- or -- right, you know,  
20 some other form of communication, and try to  
21 basically tell the borrower politely in the first  
22 instance, and we haven't received your payment yet  
23 and I just want to check it's in the mail.  
24 If the borrower continued to be more  
25 and more delinquent, then the role of the servicer

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1 Fiachra O'Driscoll  
2 would be to become somewhat more clear with the  
3 borrower in question as to what the implications  
4 were of their continuing delinquencies. And  
5 frankly, to kind of look into the matter of  
6 exactly why the borrower was delinquent, was it  
7 because of some transient problem, was it  
8 something that was more fundamental, was it -- or  
9 more permanent, in the sense of somebody having  
10 lost a job and being unable to get a new job,  
11 things of that sort.  
12 If that didn't work out and that wasn't  
13 successful, then the servicer would be responsible  
14 for sending a notice of foreclosure or sending a  
15 notice of repossession on the property in  
16 question. Typically it varied by state, but there  
17 would be a notice process at a minimum. You  
18 couldn't simply go and bolt somebody's home.  
19 So there'd be both the legal aspect to  
20 it, which is actually following the correct legal  
21 form for the area in question. There would also  
22 be a more human aspect to it, which is simply  
23 trying to work with the borrower to either bring  
24 the borrower back on track, to do something to  
25 mitigate the borrower's problem if it was a

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1 Fiachra O'Driscoll  
2 transient problem or failing that -- to actually  
3 arrange for the physical repossession of the  
4 property in question.

5 Q. All right. Was a compensation  
6 structure for Oakwood's servicing function built  
7 into these securitizations?

8 A. Yes.

9 Q. And did that structure include a  
10 priority of the fees for that compensation  
11 vis-a-vis other payments to be made out of the  
12 trust?

13 A. Yes.

14 Q. Describe that, please.

15 A. Typically Oakwood was paid for its --  
16 its servicing or was paid a fee for its servicing  
17 on behalf of the REMIC. And that fee would be  
18 paid below the payments of fees to the investment  
19 grade rated investors within the deal itself.

20 Q. When you say "fees" to those you're  
21 talking about --

22 A. In other words, what Oakwood didn't get  
23 was to say a specific loan-by-loan reimbursement  
24 for its servicing activities. What Oakwood  
25 instead got was essentially an interest strip.

1 Fiachra O'Driscoll  
2 securitizations itself was subordinated in its  
3 right and didn't have the ability to change that  
4 until -- with the bankruptcy it rejected, the  
5 servicing contracts that it held in the REMICs.

6 Q. Okay. Let me put a slightly different  
7 question. Let's put ourselves in the year 2000.

8 Why wouldn't Oakwood have been able to  
9 put that same provision in its contract for future  
10 securitizations thereafter that it managed to do  
11 after bankruptcy?

12 A. Part of the challenge at that stage was  
13 that one of the effects that that would have had  
14 was to increase the size of the B2.

15 But beyond that there was also a belief  
16 by Oakwood that because its credit standards had  
17 been rising fairly steadily, that for transactions  
18 out into the future some of the problems that it  
19 had experienced in years slightly earlier than  
20 that where it wasn't getting paid the full  
21 1 percent, it was getting paid some number less  
22 than the full 1 percent, weren't going to arise in  
23 the future because of the improving standard of  
24 the lending that Oakwood had been doing.

25 Q. And was that proving to be the case as

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1 Fiachra O'Driscoll  
2 That interest strip, if my memory serves, was not  
3 always, but it was typically 1 percent. In other  
4 words, of the -- you know, call it 10 percent of  
5 total interest that was paid in the transaction,  
6 Oakwood would be entitled to 1 percentage point of  
7 the total interest. But only after each of the  
8 other investors in the transaction, the AAA, AA, A  
9 investors, and so on, had received their interest  
10 payment in full during that period of time.

11 Q. So Oakwood's servicing fee was  
12 subordinate to all of the securities and -- all of  
13 the principal and interest payments to holders of  
14 REMIC securities; is that correct?

15 A. That isn't necessarily always correct,  
16 but it was correct in the majority, in fact, the  
17 vast majority of the time, yes.

18 Q. Now, did that situation change after  
19 bankruptcy?

20 A. Yes.

21 Q. And Oakwood's position was given a  
22 higher priority at that point?

23 A. Yes.

24 Q. Why didn't it change before bankruptcy?

25 A. Because Oakwood contractually under the

1 Fiachra O'Driscoll  
2 the company approached bankruptcy?

3 A. My recollection was that as the company  
4 approached bankruptcy that was actually proving to  
5 be the case.

6 Q. It was getting more remuneration for  
7 its servicing fees than it had been getting before  
8 expenses?

9 A. By and large it was -- on most of the  
10 2002 deals, I may be wrong on this, but my  
11 recollection was that Oakwood was actually getting  
12 the full servicing fee.

13 Q. Okay. On earlier deals it was getting  
14 less than that?

15 A. Precisely.

16 Q. Did you ever hear the term toxic or  
17 toxicity used in relation to any of the lower  
18 tranches of Oakwood securitizations?

19 A. By whom?

20 Q. Anybody.

21 A. I may have done, but I don't recall.

22 Q. Do you recall whether you ever heard  
23 that within CSFB?

24 A. I don't recall.

25 MR. CASTANARES: I'd like to mark --

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1 Fiachra O'Driscoll  
2 have the reporter mark as Exhibit 50 CSFB  
3 174305 through 307.  
4 (CSFB Exhibit 50, Three-page document,  
5 bearing Bates stamp Nos. CSFB-00174305  
6 through CSFB-00174307, marked for  
7 identification, as of this date.)  
8 MR. OSNATO: I take it it's 50 --  
9 Yes, if you have a copy for me, please.  
10 MR. CASTANARES: Yes, sure.  
11 MR. OSNATO: -- 50 because 49 was the  
12 last Felt exhibit?  
13 MR. CASTANARES: You've got it.  
14 MR. OSNATO: Okay. Here we go.  
15 Do you have a copy --  
16 Your copy is being marked --  
17 MR. CASTANARES: Yes.  
18 MR. OSNATO: -- but while we wait...  
19 (Witness looks at document.)  
20 Q. If you wish to read the entire  
21 document, you certainly may, but I don't -- I  
22 think that my questions are not ones that will  
23 require you to do so.  
24 But let me put a question to you and  
25 see if you think you can --

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1 Fiachra O'Driscoll  
2 A. Do you mind if I --  
3 Q. Oh, not at all.  
4 A. -- read it?  
5 Thank you.  
6 (Witness looks at document.)  
7 A. Okay. Thank you.  
8 Q. Speaking of the message that appears on  
9 page 174307 from Mr. Muir to various parties,  
10 including yourself, sir, did you understand  
11 Mr. Muir to be relating legal advice that he had  
12 received from the company's lawyers?  
13 A. Which sentence specifically?  
14 Q. He says, "I talked to David Rich at  
15 Hunton & Williams."  
16 Did you understand David Rich to be one  
17 of the company's lawyers?  
18 A. Correct.  
19 Q. For example, the third sentence -- the  
20 third paragraph begins with "Due to REMIC  
21 regulations."  
22 A. Yeah.  
23 Q. Did you understand that in that  
24 paragraph he was communicating advice that he had  
25 received from the company's lawyers?

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1 Fiachra O'Driscoll  
2 (Witness looks at document.)  
3 A. It's probably not right for me to  
4 speculate as to what Doug might or might not  
5 have -- I'm not sure Doug could even tell you  
6 himself right now.  
7 Q. Well, let's talk about the first  
8 message that appears here addressed to Mr. Rich  
9 and to yourself.  
10 MR. OSNATO: To be clear, are we  
11 talking about 174305?  
12 A. 305?  
13 Q. Yes, we are.  
14 And it says, "Credit operations has  
15 raised two questions as to which I think we need  
16 your thoughts."  
17 To the extent that this was addressed  
18 to Mr. Rich, did you understand that Mr. Muir was  
19 seeking legal advice from him?  
20 A. You know, I -- I recall the IndyMac  
21 office purchase and, indeed, I recall the "credit  
22 builder" loan program."  
23 Indeed, I don't recall this specific  
24 e-mail and I probably shouldn't guess.  
25 Q. So you had no view as to whether

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1 Fiachra O'Driscoll  
2 Mr. Muir was seeking legal advice in one message  
3 or communicating it in another?  
4 MR. OSNATO: Objection as to form.  
5 A. You're going beyond my jurisdiction  
6 here.  
7 Q. All right. At the time of this --  
8 these e-mails in June of 1999, am I correct that  
9 the only relationship that existed between CSFB  
10 and Oakwood was the REMIC securitizations?  
11 A. Yes.  
12 Q. How many other underwriters or  
13 co-underwriters were involved in communications  
14 such as this, Exhibit 50, between the company and  
15 its lawyers, to your knowledge?  
16 A. I don't know.  
17 Q. Were you ever aware of any other  
18 underwriters being involved in communications  
19 between the company and its lawyers?  
20 A. Yes.  
21 Q. On what occasions?  
22 A. I don't have specific instances that I  
23 can identify. But certainly Bank of America for  
24 one and Prudential Securities for a second. And I  
25 believe First Union as well at different points in

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1 Fiachra O'Driscoll  
2 time.  
3 Q. Do you believe those entities were  
4 parties to the communication of legal advice from  
5 the company's lawyers to the company?  
6 A. You're going beyond my pay grade.  
7 Q. You don't know one way or the other?  
8 A. Nope.  
9 MR. CASTANARES: Okay. Exhibit 51 will  
10 be CSFB 174907 and 8.  
11 (CSFB Exhibit 51, Two-page document,  
12 bearing Bates stamp Nos. CSFB-00174907 and  
13 CSFB-00174908, marked for identification, as  
14 of this date.)  
15 MR. CASTANARES: And I would like the  
16 witness to focus simply on his message at the  
17 bottom. I'm not going to ask him about the  
18 reply at the top.  
19 MR. OSNATO: If you do need to review  
20 the reply at the top to understand the  
21 context, however, you should feel free to do  
22 so.  
23 THE WITNESS: Sure.  
24 (Witness looks at document.)  
25 THE WITNESS: I need to start at the

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1 Fiachra O'Driscoll  
2 bottom here.  
3 (Witness looks at document.)  
4 A. Great. Thank you.  
5 Q. What motivated you to state that  
6 Oakwood had "done a bad job of managing 'bad  
7 news'?"  
8 A. Well, it's seven years ago now so it's  
9 a little hard for me to speculate at this point.  
10 Q. You have no recollection?  
11 A. I can identify one thing. For  
12 instance, this was -- well, I can't tell you about  
13 this e-mail specifically, but I can tell you maybe  
14 a small amount about what my thoughts might have  
15 been at the time. This was right around the time  
16 that Nick St. George, who was the CEO, who had  
17 led, you know, what one might characterize as  
18 the -- you know, the grow, grow or bust phase of  
19 Oakwood Homes history. First proposed to do a  
20 management buyout of the company after its stock  
21 price had come downwards and then departed the  
22 company rather quickly.  
23 Q. And that's -- is that the only thing  
24 you can recall about what you meant by saying the  
25 company had "done a bad job of managing 'bad

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1 Fiachra O'Driscoll  
2 news'?"  
3 A. I -- in truth I -- this is darn near  
4 seven years ago, so I'm not sure I remember the  
5 e-mail specifically, but that's the context to  
6 what would have been the "managing 'bad news'" at  
7 that point in time.  
8 Q. Okay. And how did that have an effect  
9 on fixed income investors?  
10 A. I think the description here, I think  
11 that the phrase was "spooked" --  
12 Q. Yes.  
13 A. -- is pretty accurate, which is that  
14 the fixed income investors, specifically the fixed  
15 income investors in the guaranteed B2 securities,  
16 were significantly concerned about the prospect  
17 for a management buyout, because, of course, what  
18 that would have meant by its nature, that the  
19 company which was sure, you know, an investment  
20 grade company with a couple of billion dollars in  
21 market cap, \$600 million in shareholders equity,  
22 investment grade rated would suddenly become a  
23 much more leveraged entity with much thinner  
24 shareholders equity, almost certainly not an  
25 investment grade rating, which would have two

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1 Fiachra O'Driscoll  
2 effects.  
3 First of all, it would reduce the  
4 rating and have a direct economic consequence on  
5 all of the B2 securities, which still at that  
6 point were trading at par, give or take, and it  
7 would have a downstream effect possibly of  
8 changing the nature of the way the company was  
9 run.  
10 So, you know, it upset investors fairly  
11 significantly largely -- largely because of the  
12 uncertainty around what Oakwood was going to look  
13 like.  
14 Q. At the time Oakwood filed bankruptcy  
15 did you personally have a view as to what caused  
16 its demise?  
17 MR. OSNATO: Objection as to the form.  
18 You can answer.  
19 A. Yes.  
20 Q. What was it?  
21 A. There were a number of factors. The --  
22 the first was -- while I said that from the time  
23 that I was involved with Oakwood, which was the  
24 1996-A securitization, if my memory is clear,  
25 Oakwood was on a flat to improving -- generally

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improving credit trend with most of its lending.

With the exception of the occasional situation in which the overall quality of the credit might improve somewhat, but there might be particular programs that were weaker credits. By and large the credit was improving.

But in the period from September 1994 on the standards of credit in the industry took a significant turn for the worse. What happened was that in September 1994 Conseco Finance or at least its precursor at that time, which was called Green Tree Financial, introduced as its standard 5 percent down payment loans.

And what that essentially meant was that borrowers were able to get a home making only a 5 percent down payment, whereas before for many years 10 percent had been the tradition in the industry. Now, that didn't mean that all of the loans were being done as 5 percent down payments, but I think fairly quickly the 5 percent down payments rose to be probably -- I would guess at the peak in probably late '95 somewhere -- maybe 50 percent of total production, give or take.

And if you look at many of the problems

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that the industry had, an astonishingly high percentage of the repossessions came -- really two things happened. First was that the -- the reason for the 5 percent down payment lending was largely to maintain the loan origination volume growth. And one way in which it did that was it probably brought forward a lot of sales that would have been spread over the following decade, perhaps by making borrowers who wouldn't have been -- wouldn't have had the wherewithal to put 10 percent down enabled them to buy a home with only 5 percent down. Secondly, many of those loans were among the loans that subsequently got repossessed.

Now, the problem was such, even though credit was improving after a measure, but, you know, by and large steady pace from 1996 on, there was still plenty of 5 percent down payment loans out there. And I don't think that they finally were eliminated entirely until probably 2002. They'd come down to a very small percentage by the time of this e-mail, for instance. But the net result was -- of that 5 percent down payment lending was that there was a significant drawing

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forward of loans -- of sales being made that otherwise would have been made out further into the future. And secondarily, there was a significant number of loans made that three, four, five, six years down the road turned into repossessions where the company made a loss.

There's a second very significant factor with us, which was that the industry had done a great deal to reduce, I think, its credit problems by that continual tightening in credit that I talked about. And when I mean "continual tightening in credit," I mean a far smaller percentage of loans being done at 5 percent down payment. Those 5 percent down payment loans only being made to people with far higher credit histories, as measured by their credit scores, by their information companies, generally would have gathered from them more exact documentation as to people's incomes, people's financial resources, where the source of those down payments were coming from, all of those kind of factors.

But the other factor that had a very significant impact, which isn't as clear, was that one of the great changes that happened in the U.S.

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housing market, is if you go back to the early 1990s for a low income family their choices really for a low income family with poor credit, as many low income families necessarily did do, their choices as to where to live were really narrowed down to three things. No. 1, they could either rent a place; No. 2, they could continue to live with their families or wait to inherit property from their families; or No. 3, they could buy a manufactured home. Because this kind of lending was routinely, you know, the kind of lending that was done to low income families.

The big change that happened -- and it wasn't really -- you know, hindsight is a wonderful thing, because it's easy to do this diagnosis now. And frankly, this wasn't a diagnosis that would have been clear to me even at the time of the company's bankruptcy, but it was becoming fairly clear then.

The big change that happened was the emergence of the subprime mortgage market. People like -- you'll have heard of all the household names. Ameriquest is probably the most prominent of them, but also people like Countrywide,

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1 Fiachra O'Driscoll  
2 GreenPoint here in New York.  
3 There's many, many people within that  
4 space who make loans to people whose credit  
5 quality is less than that required to meet the  
6 standards of the federal agencies, which again is  
7 what I -- is one segment of what I referred to  
8 earlier on as being the non-conforming mortgage  
9 market.  
10 And one of the things that actually did  
11 was it meant there was a much broader array of  
12 credit available out there for lower income  
13 families with weaker credit histories. And in  
14 particular, one of the things that happened was,  
15 that as that form of lending became more -- better  
16 understood, more competitive, the interest rates  
17 on those kind of loans fell pretty sharply. If  
18 you look at what they were at say 1990, they were  
19 probably 13 or 14 percent. If you look at what  
20 they were in 1995, '96, they were probably 10,  
21 11 percent still.  
22 By the year 2000 people with  
23 surprisingly shaky credit histories could borrow  
24 at a -- you know, 5 and a half percent interest  
25 rate loan. The kind of thing we'd -- you know,

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1 Fiachra O'Driscoll  
2 any of us trying to refinance our mortgages right  
3 now would be very happy to see, indeed.  
4 And in the meantime manufactured  
5 housing mortgage rates in part, because of the  
6 greater stress that the manufactured housing was  
7 under by that stage and the higher spreads that  
8 people were having to pay for financing,  
9 manufactured housing rates were much higher, were  
10 at 8, 9, 10 percent. And as a consequence it  
11 became much more difficult for the manufactured  
12 housing industry to be competitive with that type  
13 of regular site-built lending.  
14 Because, you know, if one thinks about  
15 it, the advantage the manufactured housing  
16 industry had was that its price per square foot to  
17 a homeowner was significantly less than the price  
18 per square foot for a regular -- what they call  
19 stick-built house or a site-built house. Largely  
20 because of the economies that one can achieve by  
21 instead of building the entire thing on site,  
22 doing it in an assembly line in a factory.  
23 But the difficulty is that from the  
24 point of view of most people, frankly what their  
25 mortgage rate is neither here nor there. The

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2 thing that matters is what their monthly payment  
3 is on the home. And the fact that these subprime  
4 mortgage loans could -- were extended at so much a  
5 lower rate, it meant that even though the purchase  
6 price of the home might be higher the net monthly  
7 payment that a borrower could get was the same or  
8 better than was the case for the manufactured  
9 housing area.  
10 So the net result of that was that --  
11 really, those two factors. First the credit  
12 factor and then, you know, just a phenomenon that  
13 frankly is not a bad one for America, because it's  
14 given a lot more people access, people on regular,  
15 ordinary middle class incomes access to home  
16 ownership who didn't have that kind of access  
17 before.  
18 And the net result of that,  
19 unfortunately, was that it was without a doubt,  
20 with the benefit of hindsight, a key factor in the  
21 manufactured housing market not recovering as  
22 quickly as it would have done, I think, in an  
23 environment where the subprime market hadn't  
24 opened up.  
25 Q. Oakwood failed while not every other

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1 Fiachra O'Driscoll  
2 manufactured housing manufacturer failed.  
3 Why do you think that these factors  
4 brought about Oakwood's failure, but not that of  
5 other players in the industry?  
6 A. Very few of the manufacturers in the  
7 industry survived without financial distress, and  
8 more of the manufacturers failed than did not.  
9 Oakwood's result was more typical than atypical.  
10 Q. Okay. What -- why did some of them  
11 survive?  
12 A. Clayton Homes was the most close  
13 comparison to Oakwood Homes.  
14 I'm -- forgive me, I'm cognizant of my  
15 counsel's advice here to stick to what's in the  
16 public record.  
17 Clayton's results also got worse and  
18 worse. Their repo problems became tougher and  
19 tougher. And in the end Clayton, the company, was  
20 not quite controlled by the Clayton family, but  
21 they had a -- I think a 35 percent ownership of  
22 the total equity in the thing. Clayton in the end  
23 sold out to Mr. Buffett at a price that was  
24 subsequently very aggressively contested by its  
25 institutional investors, who felt that the family

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1 Fiachra O'Driscoll  
2 was selling out the company at a distressed price.  
3 Q. And it was --  
4 A. Which is --  
5 Q. -- the additional capital that  
6 Mr. Buffett had that enabled Clayton to survive,  
7 is that what you're saying?  
8 A. We know nothing about Clayton's  
9 financial results from that day to this. It is  
10 stuck in the bowels of Berkshire Hathaway.  
11 Q. All right. Somehow the sale of Clayton  
12 to Berkshire Hathaway managed to prevent it from  
13 failing?  
14 A. It's -- again, I probably just  
15 should --  
16 MR. OSNATO: Speak only to what you  
17 know --  
18 A. -- speak to the public record.  
19 MR. OSNATO: -- from the public record,  
20 exactly right.  
21 A. Well, okay. Let me toss out this one  
22 fact that is in the public record, which is that  
23 one of the things that the Berkshire Hathaway did,  
24 in fact, in the interval of time between the  
25 announcement of their initial agreement to

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2 purchase Clayton and the time when it closed,  
3 which was a very vexed period of time because of  
4 all of these investor problems, Berkshire provided  
5 a \$2 billion facility, if my -- I think it was  
6 \$2 billion -- specifically to allow the company to  
7 take its loans, and to hold the loans, and to  
8 provide working capital for the company for such a  
9 period of time as it was going to need. And I  
10 think that was -- again, if my memory serves, and  
11 I'm not certain of this -- but I believe it was a  
12 ten year -- a ten-year facility.  
13 Q. Okay. This was a --  
14 A. All of that's in the public record.  
15 Q. Okay. This is a traditional lending  
16 facility, such as you described earlier on when I  
17 asked you why Oakwood couldn't just hold the paper  
18 it generated, rather than securitizing it.  
19 A. It wouldn't be appropriate for me to  
20 get into the details.  
21 Q. But what you're talking about is a  
22 lending facility, correct, a line of credit?  
23 A. A line of credit is probably a  
24 reasonable characterization, yes.  
25 Q. All right. And the effect of that line

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1 Fiachra O'Driscoll  
2 of credit was it enabled Clayton to hold onto the  
3 paper that it generated by -- the mortgages that  
4 it generated by selling homes as distinguished  
5 from monetizing them somehow?  
6 A. That was correct. Basically they were  
7 able to use those facilities to finance their  
8 working capital, to finance their inventory of  
9 loans, to finance their -- to finance their needs  
10 in that regard.  
11 Q. Would that kind of solution have worked  
12 for Oakwood and enabled it to avoid filing  
13 bankruptcy eventually?  
14 A. It's probably not right for me to  
15 speculate.  
16 Q. Okay. Do you believe that there were  
17 any measures that Oakwood could have taken in  
18 response to the market forces that you've  
19 described as having brought about its bankruptcy  
20 that would have prevented its bankruptcy?  
21 A. No, I do not.  
22 Q. Did you believe at the time that --  
23 Let's say in 2001 did you believe that  
24 Oakwood's bankruptcy was inevitable?  
25 A. In 2001?

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2 No, I did not.  
3 Q. When you brought Mr. Felt's group on  
4 board in 2001 you did not then believe that  
5 Oakwood's bankruptcy was inevitable?  
6 A. Not at all.  
7 Q. Did you believe that by 2002, when  
8 the -- by the time the contract was signed?  
9 MR. OSNATO: To be clear, the contract  
10 you're referring to is the financial advisory  
11 contract which was signed in August of 2002,  
12 to give you a reference point.  
13 THE WITNESS: Understood.  
14 A. To be honest with you, I don't recall.  
15 MR. CASTANARES: All right. As 52 I'll  
16 ask the reporter to mark 174239.  
17 (CSFB Exhibit 52, One-page document,  
18 bearing Bates stamp No. CSFB-00174239, marked  
19 for identification, as of this date.)  
20 (Witness looks at document.)  
21 THE WITNESS: Thank you.  
22 Q. Do you have a recollection of these  
23 discussions with GreenPoint?  
24 A. In general terms, yes, I do.  
25 Q. How did they originate?

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1 Fiachra O'Driscoll  
2 A. I don't recall, actually.  
3 Q. Do you recall whether you originated  
4 them as distinguished from either Oakwood or  
5 GreenPoint doing so?  
6 A. I knew you were going to ask me that  
7 and I'm afraid I really don't recall.  
8 Q. All right. GreenPoint was -- became  
9 Conseco; is that correct?  
10 A. No.  
11 Q. Oh, I'm sorry. That was Green Tree?  
12 A. Green Tree.  
13 Q. Okay.  
14 A. It's easy to get confused.  
15 Q. Okay.  
16 A. GreenPoint was what had been known as  
17 Bank America Housing Services.  
18 Q. Okay. And that entity was a competitor  
19 of Oakwood Acceptance essentially?  
20 A. Yes.  
21 Q. Okay. And was it --  
22 A. But let me -- sorry, let me just add to  
23 my answer by saying not necessarily a competitor  
24 of Oakwood Homes. Because, for instance, the  
25 retail sales centers could and would -- I think I

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2 mentioned that the retail sales centers did  
3 occasionally, in fact, more than occasionally,  
4 sometimes sell individual loans on a one at a time  
5 basis to other lenders. And one of those lenders  
6 was, indeed, GreenPoint. So, you know, they were  
7 a competitor of Oakwood Acceptance, but not  
8 necessarily perceived as being a competitor of  
9 Oakwood Homes. It was kind of -- something of a  
10 dual relationship.  
11 Q. All right. What became of these  
12 discussions?  
13 A. In the end, nothing that I can recall.  
14 Q. Okay. And can you recall why it is  
15 that nothing came of them?  
16 A. I can't, actually.  
17 Q. This happened simultaneously with the  
18 submission to your CRM department of a proposed  
19 \$75 million reverse repurchase facility, correct?  
20 A. If you say so.  
21 MR. OSNATO: Well, no, no. Don't  
22 assume.  
23 Do you recall that to be a fact?  
24 A. I don't --  
25 MR. OSNATO: If you don't know, say you

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1 Fiachra O'Driscoll  
2 don't know.  
3 A. I actually don't recall that to be a  
4 fact.  
5 Q. Did one thing have anything to do with  
6 another?  
7 A. No.  
8 Q. They're entirely separate?  
9 A. Either -- I'm pretty sure, now that I  
10 think it over again, that either it was initiated  
11 by Chuck Richardson, who is the person referred to  
12 here as being "C. Richardson," or it was initiated  
13 by Bob Smith, one or the other.  
14 Q. Okay. Was GreenPoint then a client of  
15 CSFB?  
16 A. In the terms we've discussed before,  
17 yes.  
18 Q. I'm sorry, I don't understand that  
19 qualification.  
20 A. In other words, we did mortgage  
21 securitization underwritings for them in -- much  
22 as we did with Oakwood.  
23 Q. Okay. And was there any other  
24 relationship between GreenPoint and CSFB other  
25 than that one?

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2 A. Yes.  
3 Q. What was it?  
4 A. There was an investment banking  
5 relationship as well.  
6 Q. And describe it, please.  
7 A. I don't know enough about it to be able  
8 to describe it. But suffice it to say that there  
9 was -- unlike with Oakwood where there generally  
10 speaking wasn't an investment banking officer  
11 covering Oakwood for most of that period of time.  
12 There was an investment banking officer who had a  
13 close relationship with some of the senior  
14 executives at GreenPoint along the way.  
15 I know you're going to ask me his name  
16 and he's -- unfortunately he's retired and I've  
17 forgotten his name.  
18 Q. All right. But it was somebody who  
19 worked in --  
20 A. It was an ongoing relationship anyway.  
21 Q. It was somebody who worked in the same  
22 department that Mr. Felt did?  
23 A. No.  
24 Q. What department did this gentleman work  
25 for?

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2 A. He was in the financial institutions  
3 advisory group.

4 Q. All right. And just generally  
5 speaking, what kind of services did that group  
6 perform for GreenPoint?

7 A. I don't know.

8 Q. Okay. Who runs that group now?

9 A. It's run by two gentlemen, Eric Varvel  
10 and Mark Granetz.

11 Q. And they're both here in New York?

12 A. I am not sure, actually.

13 Q. Okay. Do you recall that at some point  
14 or another there was a proposition put to CRM  
15 about a \$75 million reverse repurchase facility?

16 A. Yes.

17 Q. I believe in earlier testimony you  
18 talked about a reverse repurchase facility as  
19 being similar in some respect to a warehouse or  
20 asset purchase facility, am I correct?

21 A. It might be or it might not be  
22 depending on the circumstances.

23 Q. Okay.

24 A. In this particular instance that  
25 reverse repurchase facility was actually pretty

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2 some shape or form as well.

3 Q. And did he say why they felt that way?

4 A. I don't recall enough about the  
5 conversation to say.

6 Q. Based upon your knowledge of the  
7 industry trends, et cetera, was there any -- did  
8 you need him to tell you why they felt that way or  
9 did you --

10 A. No.

11 Q. Did you understand why they felt that  
12 way?

13 A. Yes.

14 Q. What was it?

15 A. At that period of time, that was a  
16 period of time in which Bank of America in  
17 particular was, quote, unquote, making a big push  
18 into the investment banking industry, into a  
19 variety of different things, into straight  
20 investment banking advisory activities, M&A,  
21 corporate bond offerings like the one that they  
22 did right around that time. But also mortgaged  
23 securitizations and my piece of the business, if  
24 you will.

25 And they were very aggressive at that

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2 dissimilar.

3 Q. "Pretty dissimilar"?

4 A. Pretty dissimilar.

5 Q. In what respects was it dissimilar?

6 Now, we're not talking --

7 A. For one thing --

8 Q. -- about 75 million --

9 A. -- in truth, I think I'd need to see  
10 the documents to refresh my recollection of  
11 exactly what was in there. I know one of the  
12 things it provided for was financing securities as  
13 well as financing loans.

14 Q. Okay. And whose idea was it to --

15 who brought up this potential facility,  
16 was it you, or was it Oakwood, or was it some  
17 third party?

18 A. Oakwood on a couple of occasions,  
19 specifically Doug Muir, made it clear to us that  
20 their other banking relationships, in particular  
21 Bank of America and First Union, who were -- had a  
22 broader relationship with Oakwood and were also  
23 providing direct credit to Oakwood, were putting  
24 him under a good deal of pressure and saying that  
25 Credit Suisse should also provide financing in

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2 point in time. And while I don't want to suggest  
3 that they complied with the law, they skirted very  
4 close to the fed rules about linking together the  
5 provision of credit together with seeking other  
6 banking services to come their way.

7 So they had made it very clear to not  
8 just Oakwood, but I saw the same thing with  
9 Consecro, I saw the same thing I think with  
10 Clayton Homes as well, that they were putting  
11 companies under a good deal of pressure to -- in  
12 exchange for credit give them further assignments  
13 and further opportunities to earn fees from either  
14 underwriting, securities underwriting businesses,  
15 or from investment banking advisory businesses.

16 Q. Okay. I may have misunderstood what  
17 you said before. I hope you'll clarify this for  
18 me.

19 I had understood that you told me that  
20 B of A was pressuring Oakwood to get Credit Suisse  
21 First Boston to lend money, did I misunderstand  
22 you?

23 A. May I rephrase myself?

24 Q. Yeah. And let me phrase this a little  
25 broader.

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2 A. Yeah.  
3 Q. Because -- and I think what I  
4 understood you to say in response was that B of A  
5 was trying to get investment banking business, so  
6 I'm confused by the two answers.  
7 A. No. And I'm not sure if I misspoke or  
8 whether alternatively it could easily be  
9 misunderstood.  
10 Doug's response to that pressure that  
11 was clearly being applied to him was to say, well,  
12 the counter to that is that Credit Suisse has to  
13 step up. At which point it's harder for Bank of  
14 America to be demanding a bigger share of the  
15 services if Credit Suisse is also seen as  
16 providing the same sort of facilities.  
17 Q. Okay. Now I'm probably even more  
18 confused.  
19 Are you telling me that you understood  
20 what Mr. Muir said to be that in order for CSFB to  
21 continue to get --  
22 THE WITNESS: I hate to interrupt, but  
23 weren't we going to take a pit stop at 12:30?  
24 MR. OSNATO: We are going to break for  
25 lunch. Why don't we finish this line of

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1 Fiachra O'Driscoll  
2 questioning.  
3 THE WITNESS: And then we'll take a  
4 break?  
5 MR. OSNATO: If that's okay. And then  
6 it is -- we are at about the three hour mark,  
7 so...  
8 MR. CASTANARES: Now that the question  
9 stands where it is interrupted, I don't care  
10 whether we do it before lunch or after.  
11 MR. OSNATO: Are you sure?  
12 MR. CASTANARES: So if you want to  
13 break, that's fine with me.  
14 THE WITNESS: If I may, can I clarify  
15 the point?  
16 MR. OSNATO: Let's leave a clean record  
17 and then pick up after lunch.  
18 MR. CASTANARES: Fine.  
19 MR. OSNATO: Do you need the question  
20 read back? I mean, are you clear what you're  
21 answering?  
22 THE WITNESS: Yeah, I'm clear as to the  
23 question.  
24 MR. CASTANARES: Okay.  
25 A. Bank of America's approach to

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2 customers, generally speaking at that point in  
3 time is -- back in the days when we were a pure  
4 commercial bank we simply extended credit to you.  
5 Now -- and I'm not suggesting that they  
6 didn't stay within the law. But they were making  
7 it very clear to customers that their continued  
8 provision of credit in whatever shape or form it  
9 was provided was going to be contingent on getting  
10 a bigger share of the assignments, both advisory  
11 assignments and also securities underwriting  
12 business that that company had to offer.  
13 Q. Okay. So now I think perhaps I  
14 understand. Let me see if I've got it.  
15 And so Muir's reaction was that if CSFB  
16 wants to keep B of A from horning in on its  
17 investment banking service it's got to lend some  
18 money?  
19 MR. OSNATO: Objection as to the form.  
20 I'm not sure that accurately  
21 characterizes his testimony.  
22 But you can tell us if that's right.  
23 A. For clarity, at that point in time we  
24 weren't providing what in the industry would be  
25 regarded as being investment banking services,

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2 which would typically be seen as -- the euphemism  
3 for investment banking advisory services. What we  
4 were providing, of course, was securities  
5 underwriting services.  
6 And what Doug made it fairly clear was  
7 that he was going to have to give larger  
8 assignments and more, perhaps, lead assignments,  
9 and perhaps sole assignments to Bank of America if  
10 it was not possible for him to counter argue  
11 to Bank of America that, in fact, Credit Suisse  
12 First Boston was also committing credit on a  
13 comparable basis.  
14 Q. All right. And that's what gave rise  
15 to this requested \$75 million reverse repurchase  
16 facility?  
17 A. I think that that is -- that is the  
18 assumption that I drew at the time.  
19 MR. CASTANARES: Okay. Great. This is  
20 a good place to break for lunch.  
21 MR. OSNATO: It is good?  
22 Thank you.  
23 THE VIDEOGRAPHER: Okay. We'll go off  
24 the record at 12:35, tape 2.  
25 (Luncheon recess: 12:35 p.m.)

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AFTERNOON SESSION

(Time noted: 1:28 p.m.)

FIACHRA O'DRISCOLL resumed

as a witness, having been previously sworn by  
the Notary Public, was examined and testified  
as follows:

THE VIDEOGRAPHER: Okay. We're back on  
the record. It's 1:28. This is tape 2.

EXAMINATION BY

MR. CASTANARES:

Q. Mr. O'Driscoll, at about the time that  
the \$75 million reverse repurchase facility was  
being made, was being discussed, that was late '00  
or early '01; is that right?

A. I'm sorry, late '99 or early '00; is  
that correct?

A. Probably late 1999 I think would be  
accurate.

Q. Okay. Were other lenders leaving the  
industry at that time?

A. Other manufactured housing lenders?

Q. Right.

A. Let me just think through.

I -- oddly enough during that time

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lenders left the industry once again?

A. Yes.

Q. When did that commence?

A. In 2002, 2000 -- really into 2002,  
perhaps 2001 as well.

Q. Okay. And what, if you know, motivated  
those departures?

A. A number of people ended up in  
bankruptcy. And other people whose, perhaps, sole  
business wasn't manufactured housing decided to  
retrench, to get out of the manufactured housing  
business, to shut it down, close those businesses  
down and proceed on with the other parts of the  
business that were working well.

Q. Okay. And when you speak of people in  
bankruptcy you're talking about lenders in  
bankruptcy as distinguished from manufacturers?

A. I beg your pardon.

Lenders, yes.

Q. Now, can you explain to me the  
structure of a reverse repurchase facility.

A. Certainly. A reverse repurchase  
facility is an arrangement whereby -- you have two  
parties to it. One party, the party that holds a

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interval, no, I don't think so.

Q. Had there been a period earlier than  
that when lenders were leaving the manufactured  
housing industry?

A. Yes. Back a little while earlier than  
that, in late 1998 or early 1999, we saw a number  
of people either go bankrupt or simply get out of  
the business.

Q. Lenders went bankrupt, you mean, or  
their --

A. Lenders.

Q. Okay. And what had happened to change  
that in later '99, either that all of the ones  
that were going to leave had done so or did some  
new people get back into the industry at that  
point?

A. I don't know.

Q. All right. But in any event, as of  
late '99, when the \$75 million facility was being  
discussed, that was not a time when lenders were  
actually leaving then; is that right?

A. I -- yeah, I can't say I was watching  
the clock, but that I believe is correct.

Q. Did there come a later time when

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particular security, or in more recent times in  
the last decade or so, perhaps holds a loan, sells  
it to another party. But they simultaneously  
enter into an arrangement whereby that other --  
that other party agrees to resell that security to  
them at a fixed future date in time, at a  
specified price or at usually -- or very often  
within a certain time interval at a price that's  
adjusted to a degree for the time interval at  
which the thing is sold.

So effectively what you've got is  
you've got a paired immediate sale of a security  
and a future repurchase of that security within a  
time window that's agreed upon and identified.  
And that's something that's been a really common  
feature of the U.S. securities industry for many  
decades. I wouldn't care to say exactly how many,  
but it has some specific -- I know that there's  
some specific provisions in the bankruptcy code  
that specifically treat and to a degree privilege  
some of those kind of arrangements.

There's also a very extensive body of  
literature on the accounting for these things,  
because they're actually accounted for not as a

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1 Fiachra O'Driscoll  
2 sale under the repurchase. But because it's not  
3 an optional repurchase, because it's a compulsory  
4 repurchase the accounting profession has always  
5 viewed these things as being financing from an  
6 accounting point of view, without regard to the  
7 legal form in which these things are taken.  
8 And if you go back to -- you know,  
9 historically these things were typically -- and if  
10 you look at the core of the market for this kind  
11 of stuff it's mostly treasuries and other highly  
12 liquid securities. But probably over the last  
13 decade or so there's been a tendency to use these  
14 kind of facilities for raw loans, particularly  
15 mortgage loans and things of that sort as well.  
16 And that would have been the kind of thing that  
17 was contemplated here.  
18 And again, from a structure point of  
19 view it's one of these things that -- particularly  
20 with regard to the financing of loans that are  
21 being aggregated for securitization, it's kind of  
22 come in and out of fashion. I'd have to say that  
23 it was somewhat in vogue as a style. These vogues  
24 are ones selected by the lawyers, rather than  
25 anybody else, but it was somewhat in vogue during

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1 Fiachra O'Driscoll  
2 that period of time.  
3 And these days something more like the  
4 kind of mechanisms that were put in place for the  
5 Oakwood loan purchase facility is probably more  
6 typical than what's there now.  
7 Q. Okay. And you may have answered this  
8 question in the course of the answer you've just  
9 given, but I'm not -- I just want to make certain  
10 of it.  
11 Were the securities which were to be  
12 the subject of the -- or strike that.  
13 Well, let's call it securities.  
14 Were the securities or loans which were  
15 to be the subject of this particular facility the  
16 mortgages, as you referred to them, or were they  
17 REMIC securities held by Oakwood?  
18 A. They were definitely REMIC securities  
19 held by Oakwood, for sure. As to the other, I  
20 don't recall.  
21 Q. Okay. And just to put names to the  
22 structure you've just described, Oakwood would  
23 sell a security to CSFB and at the same time  
24 promise to buy it back at a specified price at a  
25 later date?

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1 Fiachra O'Driscoll  
2 A. Yes.  
3 Q. And what benefit would Oakwood derive  
4 from this transaction?  
5 A. Because it would get cash from the  
6 arrangement in much the same way as it would  
7 through a straightforward loan arrangement.  
8 Q. And how would CSFB be compensated in  
9 such a transaction?  
10 A. It would earn the difference between  
11 the price at which it purchased the security and  
12 the price at which it sold back the security. And  
13 usually that was calculated such as to be a  
14 spread, a spread over some form of bank price,  
15 usually LIBOR or something of that sort. So in  
16 essence you're earning -- in the difference  
17 between the two prices you're earning an interest  
18 rate.  
19 Q. Right. Okay. Thank you.  
20 Now, were you the person at CSFB who  
21 carried this proposal within the company  
22 primarily?  
23 A. What do you mean by "carried"?  
24 Q. Well, I mean somebody submitted  
25 presumably --

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1 Fiachra O'Driscoll  
2 A. Yeah.  
3 Q. -- some sort of proposal to CRM on this  
4 transaction. Somebody may have -- if somebody at  
5 CRM or else the New York branch wanted to know  
6 about it, know about Oakwood, whatever, they'd  
7 probably turn to someone, was that person you?  
8 A. Well, can I separate those two things  
9 into one --  
10 Q. Definitely. Uh-huh.  
11 A. -- one part?  
12 Q. Tell me what your role was.  
13 A. The answer for the first part was, yes.  
14 I was the one, if I recall, responsible for  
15 submitting that thing to credit, either directly  
16 or someone at my instruction. As for the second  
17 part, it wouldn't necessarily be me.  
18 Q. Okay. Do you recall whether anybody  
19 from CRM inquired of you in any way regarding this  
20 proposed transaction?  
21 A. I do not recall a specific instance.  
22 Q. Do you recall furnishing any  
23 information to CRM about Oakwood, or its  
24 transactions, or business?  
25 A. I don't recall it. Again, I don't

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1 Fiachra O'Driscoll  
2 recall a specific instance.  
3 Q. And would this have been done by way of  
4 some sort of loan application that you prepared or  
5 something equivalent to that, some formal  
6 documentary application?  
7 A. No.  
8 Q. How was it submitted to CRM?  
9 A. Usually something would be submitted to  
10 CRM that might be as simple as a telephone call.  
11 The thing could be done really entirely verbally,  
12 depending upon the circumstances.  
13 More often you prepare a term sheet.  
14 The term sheet might have been something that you  
15 had shared with the company beforehand to get the  
16 gist of what the company was looking for, on the  
17 basis that the term sheet was one that you were  
18 then going to submit to the credit risk manager,  
19 to LCD, and to everybody else. Or it might be  
20 something that you would just deliver to LCD in  
21 the first instance saying, you know, I want to  
22 discuss this with you before I show it to the  
23 company. Either of the two routes.  
24 Q. Let me see if I can clarify also what  
25 you understood the process to be for the approval

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1 Fiachra O'Driscoll  
2 or disapproval of a proposal such as this.  
3 I presume you submitted material  
4 directly to CRM; is that correct?  
5 A. Yes.  
6 Q. Now, did you understand when you did  
7 that, that the powers that be at the New York  
8 branch had made the decision to go forward with  
9 this transaction if it had CRM's stamp of  
10 approval?  
11 Or on the other hand, that CRM first  
12 would decide whether to approve it or not. And if  
13 it did so, it then would be submitted for  
14 decision?  
15 Or what was the process?  
16 A. You're going to have to break that down  
17 into a couple of different questions. There's  
18 about four questions in there, with respect.  
19 Q. I'm just trying -- I'm trying to  
20 understand what the process was, so...  
21 MR. OSNATO: Is the process question  
22 directed generally or are we talking now  
23 specifically about the proposed reverse  
24 repurchase facility?  
25 Q. Did this --

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1 Fiachra O'Driscoll  
2 Did the process on this one follow  
3 anything other than the general pattern?  
4 A. No.  
5 Q. Okay. So what was it?  
6 A. Very standard.  
7 I do recall that actually the specific  
8 CRM officer to whom I submitted the proposal at  
9 the time was Tom Irwin, as was the case with  
10 really not absolutely anything, but almost  
11 anything that we were doing within the space  
12 during that period of time. Not just for  
13 manufactured housing, but he was also responsible  
14 for counterparty risk with respect to really any  
15 of the people within the non-conforming mortgage  
16 space, the counterparties within the  
17 non-conforming mortgage space. So I do recall  
18 that the proposal was submitted to him  
19 specifically.  
20 From there, depending on the  
21 quantification of the potential exposure to the  
22 company from that counterparty, if it was within  
23 his threshold he could seek to approve it himself.  
24 If it was -- if it exceeded that threshold what  
25 would typically happen is he would review it,

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2 gather information, make a recommendation, and  
3 submit it to his superior. His superior, again,  
4 would have some sort of credit exposure limit, and  
5 so on.  
6 Q. Okay. Assuming for the purposes of  
7 discussion that the exposure was within  
8 Mr. Irwin's credit limit or authority limit, was  
9 it your understanding that if he gave it his go  
10 ahead the transaction was a go or did it still  
11 have to go to a committee of some sort for some  
12 final approval that evaluated something beyond  
13 there were some credit risk issues?  
14 A. Can you break that down into a couple  
15 of different questions.  
16 Q. Was it your understanding that if CRM  
17 gave its approval that the transaction was a done  
18 deal?  
19 A. No.  
20 Q. Okay. What else had to happen?  
21 A. As a practical matter Tom -- Tom rarely  
22 would take a decision to approve a credit or  
23 otherwise on his own. So as a practical matter,  
24 while there wasn't a committee process within CRM  
25 there was to a degree a certain measure of

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1 Fiachra O'Driscoll  
2 collegial consultation. Which was as a practical  
3 matter, he would normally, almost invariably  
4 consult with his superiors before making a credit  
5 decision.  
6 Q. All right. Let me -- maybe I've asked  
7 this question inartfully. As a matter of fact,  
8 I'm sure I have. So let me try it again.  
9 Did this transaction need any form of  
10 approval other than credit risk management  
11 approval in order for it to be --  
12 A. Yeah.  
13 Q. -- to move forward?  
14 A. Typically I would need to get my  
15 supervisor's approval for the transaction before  
16 it would appear. And depending on the specific  
17 entity that was actually going to provide the  
18 finance, I might also need to get approval from  
19 the head of that business unit.  
20 You -- if you'll forgive me, one of the  
21 earlier questions you asked, the reason I was a  
22 little confused was you said the New York branch  
23 with respect to the reverse repo. And technically  
24 it wouldn't have been the New York branch.  
25 Because the New York branch had a certain kind of

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2 financings that it would do and could do, whereas  
3 a reverse repo would have been something that  
4 was done out of the broker-dealer, out of  
5 Credit Suisse First Boston Corporation.  
6 Q. Okay.  
7 A. So I would have had to potentially go  
8 to not just my supervisor, but also to somebody  
9 within the business unit who handled those things  
10 on a day to day to get their approval as well.  
11 Q. Who was your supervisor at that time?  
12 A. What date was that?  
13 That was 1999?  
14 Q. So it's late '99, early 2000.  
15 A. It was a gentleman by the name of  
16 Phil Weingord.  
17 Q. Phil Weingart?  
18 A. Gord, g-o-r-d.  
19 Q. Oh, gord. Okay.  
20 And did that change before Oakwood's  
21 bankruptcy, the identity of your supervisor?  
22 A. Yes.  
23 Q. Who -- just tell me what happened in  
24 that regard.  
25 A. He left to go to Deutsche Bank in 2000.

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1 Fiachra O'Driscoll  
2 And from that date till the date of the bankruptcy  
3 a guy called Joe Donovan was my supervisor.  
4 Q. All right. Do you know whether  
5 Mr. Weingord or Mr. Donovan ever interacted  
6 directly or had any communication with any Oakwood  
7 people?  
8 A. I don't recall.  
9 Q. Now, in terms of economic risks --  
10 which I'm trying to separate that out from any  
11 legal questions involved -- what is the difference  
12 on the Credit Suisse side between reverse  
13 repurchase and the asset purchase facility that  
14 was done a year later?  
15 MR. OSNATO: I'm going to object to the  
16 form of the question.  
17 A. It would depend on the circumstances.  
18 Q. Were there different economic risk  
19 characteristics between the -- I mean, aside from  
20 the size of the line --  
21 A. Uh-huh.  
22 Q. -- were there different economic risk  
23 characteristics from CSPB's perspective in the  
24 \$75 million reverse repurchase proposal and the  
25 proposal a year later that resulted in the asset

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2 purchase line?  
3 A. There would have been, yes.  
4 Q. And what were they?  
5 A. The reverse repo line was intended, if  
6 I recall -- and I don't have the documents in  
7 front of me so I don't -- you know, you'll have to  
8 forgive me. If you refresh my recollection, we'll  
9 put the documents in front of me, it may be  
10 somewhat different.  
11 But the reverse repo line had a fairly  
12 significant element of loans -- sorry, of  
13 securities within it, maybe the whole lot, as a  
14 way of financing those loans. It was also a much  
15 shorter term. Typically these things were not  
16 three-year committed lines. Typically these  
17 things were at three month, or six month, or some  
18 shorter period of time.  
19 I don't recall what the period of time  
20 was that the commitment was for this reverse repo,  
21 but it would have been very short. So both the  
22 assets were different and the maturity of the  
23 exposure was very different.  
24 Q. Would the shorter maturity of the  
25 exposure have tended to increase or decrease the

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1 Fiachra O'Driscoll  
2 risk characteristics of the line from the  
3 perspective of CSFB?  
4 A. Decrease.  
5 Q. And would the asset mix have tended to  
6 increase or decrease that exposure?  
7 A. As opposed to outright loans?  
8 Q. As opposed -- I'm trying to contrast  
9 the CSFB risk in the proposed reverse repo  
10 proposal with the risk in the asset purchase  
11 proposal, which was adopted approximately a year  
12 later. And I believe you told me that the one  
13 aspect was the difference in maturity and the  
14 other had to do with the securities themselves.  
15 So I'm asking you if the difference in  
16 the securities themselves was greater or presented  
17 greater risks to CSFB in one transaction than the  
18 other or lesser ones?  
19 A. No. Because they weren't  
20 contemporaneous in time, I didn't have occasion to  
21 make such comparison at that time. And to be  
22 honest, I'd need to go back and look at the nature  
23 of the instruments in a good deal, more detail now  
24 to make an honest assessment.  
25 Q. Do you have any knowledge of why it was

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2 that CRM turned one down and approved the other?  
3 MR. OSNATO: Objection to the form.  
4 A. No.  
5 Q. Okay. Did you have any knowledge of  
6 why CRM turned the first one down?  
7 A. I was never actually informed that they  
8 had turned it down.  
9 Q. So as far as you know, it was still an  
10 open proposal a year later when the asset purchase  
11 facility was being discussed?  
12 A. It hadn't been discussed at that point.  
13 What frequently happened was that --  
14 was one of three things. Either a credit  
15 situation would be approved, a credit situation  
16 would be declined, or very frequently a credit  
17 situation would have been left open.  
18 Particularly -- and I don't want to cast  
19 aspersions towards my colleagues here --  
20 Tom Irwin, though, is one of the people who -- and  
21 again, I don't want to, you know, draw comments on  
22 somebody's professional capabilities, and so on --  
23 would very often leave something open. So he  
24 would sometimes -- he would sometimes never quite  
25 tell one whether the thing was actually approved

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1 Fiachra O'Driscoll  
2 or not approved.  
3 Q. Did you ever receive a copy --  
4 Did you ever see a copy of the report  
5 that Xanthos wrote in January of 2000 turning this  
6 down?  
7 A. No.  
8 MR. OSNATO: Objection to the form.  
9 Let me -- please, before you answer,  
10 let me get my objection in.  
11 I'm going to --  
12 THE WITNESS: Sorry.  
13 MR. OSNATO: -- object to the form of  
14 the question.  
15 You can answer.  
16 Do you want the question read back?  
17 THE WITNESS: Yeah. Well, actually let  
18 me --  
19 MR. OSNATO: Can you read back the  
20 question, please?  
21 THE WITNESS: Let me rephrase my  
22 answer.  
23 MR. OSNATO: Well, just listen to the  
24 original question and then provide an answer.  
25 THE WITNESS: Let me rephrase my -- if

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1 Fiachra O'Driscoll  
2 I may, rephrase my answer.  
3 A. In the first place it wouldn't have  
4 been James place to turn a facility down in  
5 isolation. He didn't have any authority to  
6 approve or disprove credit that I'm aware. In the  
7 second place, actually I didn't know there was  
8 such a report.  
9 Q. To this moment, when I asked you this  
10 question, you didn't know it?  
11 THE WITNESS: Can I answer that?  
12 MR. OSNATO: You can absolutely answer  
13 the question.  
14 I, again, am going to object to the  
15 lack of foundation in the question.  
16 But you can answer the question.  
17 A. I was shown a piece of paper by our  
18 counsel yesterday to that effect, that was the  
19 first I'd ever seen or heard of it.  
20 Q. Okay. Now, there was another reverse  
21 repurchase facility proposed just a few months  
22 later, wasn't there, in the amount of \$50 million?  
23 A. I don't recall.  
24 MR. CASTANARES: Let me see if I can  
25 help refresh your memory.

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I'll ask the reporter to mark

CSFB 5:2903 as 53.

(CSFB Exhibit 53, One-page Memorandum,

bearing Bates stamp No. CSFB-00512903, marked  
for identification, as of this date.)

THE WITNESS: Uh-huh.

Q. Does this document help refresh your  
memory as to whether there was a proposal for a  
\$50 million reverse repurchase facility in  
approximately March of 2000?

A. Actually, no.

No. 1, there was never a second  
proposal. I don't think that there was ever  
anything that -- to the best of my knowledge,  
there was only ever one proposal for a reverse  
repo. I don't recall its exact dollar amount at  
the time. I thought it was a \$75 million  
proposal. There may have been revised term  
sheets. It wasn't unusual actually to have  
revisions of term sheets of that sort during that  
period of time. So I don't think that there was  
ever multiple proposals, certainly from my  
perspective.

Q. So if it was all one proposal you were

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you'd get an outright turndown. Much more often  
it was the case that their answer was, well, can  
you think about whether or not you, you know, can  
approach this thing differently?

So term sheets would have been revised,  
term sheets would have been transformed in their  
nature, and you would see if there was a meeting  
of the minds.

Q. Okay. Now, yesterday for the first  
time you saw Xanthos's January 2000  
recommendation; is that correct?

A. Yes.

Q. Is that the type of document, speaking  
as of that time, January 2000, that would have  
evidenced a complete turndown of a proposal?

A. I never saw evidence of a complete  
turndown of a proposal.

Q. Okay. Were you ever aware that CSPB  
had turned down any proposals ever?

MR. OSNATO: Objection as to the form.

Q. Whether they related to Oakwood or  
anything else?

A. Yes, absolutely.

Q. Okay. And were those communicated to

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informed on approximately March 21, 2000 that it  
was turned down, right?

A. No.

Q. So this, the statement here that Irwin  
and Xanthos informed you of, this decision is  
incorrect?

A. It's incorrect.

Q. They never did tell you that?

A. Nope.

Q. Okay.

A. The first I heard about this was  
yesterday.

Q. So as far as you know, that reverse  
repo facility was still under consideration as of  
the time of Oakwood's bankruptcy in 2002?

A. There hadn't been significant  
discussions about it and it would -- those  
discussions were from my perspective superseded by  
the later loan purchase facility discussions.

Q. A year later?

A. Yeah. And it wasn't unusual for  
discussions to change in their form. Because more  
typically, as I said, rather than -- sometimes  
you'd get an outright approval. Very occasionally

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you orally always?

A. They were always communicated orally.

Q. Okay. Now, in the course of the next  
few months after the \$75 million proposal was  
being made to CRM, did anybody at Oakwood ask you  
what was going on with it?

A. I'm sure they did, but I don't have any  
specific recollection.

Q. Okay. Did it ever occur to you to  
wonder why you hadn't heard from CRM on this?

A. There was never a situation where I  
hadn't heard from CRM.

Q. Well, this was one, wasn't it?

A. No.

Q. And you hadn't heard from CRM on this  
proposal until yesterday, right?

A. I hadn't seen a formal written  
submission from CRM, but I -- on the various  
things that we worked on, of which Oakwood was  
only a component, I probably talked to Tom Irwin  
every two or three days.

Q. All right. Well, my question to you is  
did CRM ever communicate to you the turndown of  
any proposal relating to Oakwood?

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2 A. No.  
3 Q. And did it ever -- did you ever inquire  
4 as to the status of the reverse repurchase  
5 facility, in terms of whether CRM was going to  
6 approve it or not?  
7 A. I don't recall, but I'm sure I would  
8 have done.  
9 Q. And you can't -- I presume you can't  
10 remember what answer you got.  
11 A. I cannot remember the answer I got, no.  
12 Q. To the best of your knowledge, the way  
13 CRM worked at that time when it either approved or  
14 disapproved a proposed transaction, did it prepare  
15 some form of memorandum or report of its reasons  
16 for doing so?  
17 A. Yes.  
18 Q. So in the ordinary course you'd have  
19 expected CRM to have prepared some form of report  
20 regarding the \$75 million reverse repo facility,  
21 correct?  
22 A. I don't know, to tell you the truth.  
23 Q. But in the ordinary course it would  
24 have done so, right?  
25 A. They typically prepared internally some

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2 sort of credit application.  
3 Q. And was there some sort of Chinese wall  
4 that would prevent you from getting the report?  
5 A. I never saw such a report.  
6 Q. Was there some particular reason you  
7 didn't, other than the fact that you just didn't  
8 happen to?  
9 I mean, was there some rule against it  
10 or...  
11 A. I wasn't aware of anybody within my  
12 business unit ever seeing such a report.  
13 Q. Okay. And so as far as you know then,  
14 sir, Oakwood was never advised that the facility  
15 had been turned down; is that correct?  
16 A. I don't know.  
17 Q. Did you have a chance to read  
18 Mr. Xanthos's report yesterday when you saw it?  
19 MR. OSNATO: Can we be specific as to  
20 what report you're referring to by date or  
21 Bates range.  
22 Q. How does 250116 sound?  
23 MR. OSNATO: May we have a date so the  
24 witness can get oriented?  
25 MR. CASTANARES: We have it here

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2 someplace. I don't want to give it to the  
3 witness and have him read it --  
4 MR. OSNATO: I understand. There are  
5 multiple Xanthos documents. I want to be  
6 sure we're talking about the right one.  
7 MR. CASTANARES: All right. I'll be  
8 happy to put in front of him --  
9 MR. HOLT: January 10th.  
10 MR. OSNATO: January 10th?  
11 MR. HOLT: 2000.  
12 MR. OSNATO: 2000.  
13 MR. CASTANARES: And I'll just --  
14 MR. OSNATO: So we're talking about  
15 2000.  
16 MR. CASTANARES: Let me just speak to  
17 counsel for a second, if I might.  
18 MR. OSNATO: Sure.  
19 MR. CASTANARES: I'll be happy to put  
20 it in front of him. I am choosing not to do  
21 so because I don't -- and I'm not questioning  
22 him about the contents of it and I don't want  
23 to spend the time having him read the entire  
24 document.  
25 MR. OSNATO: Understood.

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2 MR. CASTANARES: If it would -- if you  
3 would like him to have it in front of him to  
4 help refresh his memory, that's fine with me.  
5 MR. OSNATO: That's not my point. My  
6 point is there are multiple Xanthos  
7 documents --  
8 MR. CASTANARES: Fine. Okay.  
9 MR. OSNATO: -- written at different  
10 points in time.  
11 MR. CASTANARES: We understand each  
12 other.  
13 MR. OSNATO: I just want to make sure  
14 we're on the same page.  
15 MR. CASTANARES: We understand each  
16 other. We are at least literally on the same  
17 page.  
18 Q. Did you read it yesterday?  
19 A. I don't know.  
20 Q. You can't remember whether you read it  
21 or not?  
22 A. You haven't showed it to me.  
23 MR. CASTANARES: Well, all right.  
24 Let's show it to him.  
25 MR. OSNATO: There you have it.

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1 Fiachra O'Driscoll  
2 A. What can I tell you?  
3 There were multiple ones, right?  
4 Q. Okay. I would like you to look at this  
5 document long enough to know whether you read it  
6 yesterday or not. That's the question. I hope  
7 you won't have to read the entire document to do  
8 so.  
9 MR. CASTANARES: And I'll ask the  
10 reporter to mark it as Exhibit 54.  
11 (CSFB Exhibit 54, Multipage Memorandum,  
12 bearing Bates stamp Nos. CSFB-00250116  
13 through CSFB-00250129, marked for  
14 identification, as of this date.)  
15 MR. OSNATO: You don't need to read it.  
16 Just get a little bit of the context. The  
17 question is whether you recall reviewing  
18 that.  
19 (Witness looks at document.)  
20 A. I don't believe I read it yesterday. I  
21 think I saw it yesterday, but I don't believe I  
22 read it.  
23 Q. So as you sit here, you've never read  
24 this document; is that right?  
25 A. No.

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1 Fiachra O'Driscoll  
2 I don't think so, anyway.  
3 Q. Okay. "No," you haven't read it or  
4 "no," that is not right?  
5 A. I do not believe that I read this one  
6 yesterday.  
7 Q. Okay. Or this morning or ever, right?  
8 A. Or this morning or ever.  
9 Q. Right. Okay. Good.  
10 Who is Kareem, K-r-e-e-m --  
11 K-a-r-e-e-m, Serageldin?  
12 I'm pronouncing that phonetically and I  
13 thought you could tell me how to pronounce it,  
14 S-e-r-a-g-e-l-d-i-n?  
15 A. Serageldin.  
16 Q. Serageldin. Okay. Who is he?  
17 A. He is a gentleman who used to work  
18 within my team within the asset finance group at  
19 Credit Suisse, who by the date of this period of  
20 time -- this is -- I take it we're talking about  
21 1999, 2000, 2001 -- was working for Joe Donovan's  
22 direct superior at that time, which was  
23 John Chrystal, and he was in a credit derivatives  
24 team.  
25 Q. In, I'm sorry?

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1 Fiachra O'Driscoll  
2 A. He was within a business unit that  
3 dealt primarily with credit derivatives and other  
4 structured -- structured credit activities. I  
5 think it was technically called structured credit  
6 products at the time, I believe.  
7 Q. What was the relationship of him or his  
8 outfit to Oakwood?  
9 A. None, that I know of.  
10 Q. Okay. CSFB has produced a number of  
11 e-mails to me that are showing him as getting  
12 copies that related to Oakwood. I have a bunch of  
13 them available.  
14 You cannot remember any role he played  
15 on the Oakwood transactions?  
16 A. Yes, I can.  
17 Q. What role did he play on the Oakwood  
18 transactions?  
19 A. The role that he took was he was -- he  
20 was responsible to Joe Donovan's -- to Joe  
21 Donovan's supervisor, John Chrystal, for a variety  
22 of different credit positions, including  
23 effectively taking onto his trading book as it was  
24 at the time, the credit risk from this particular  
25 Oakwood loan -- what turned into the loan purchase

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1 Fiachra O'Driscoll  
2 facility.  
3 Q. All right. So -- and did Kareem have  
4 any relationship with Oakwood other than the loan  
5 purchase facility?  
6 A. Kareem had worked within my team in the  
7 asset securitization group back in 1996, 1997,  
8 part of 1998. So he knew Doug Muir, he knew  
9 several of the executives of Oakwood from that  
10 period of time.  
11 Q. Do you know whether he had any contact  
12 with any Oakwood people in the period after 1999,  
13 let's say?  
14 A. I know that he met Doug Muir, again, on  
15 one occasion in the preparation for putting  
16 together the loan purchase facility, because we  
17 had a flight down there to meet with those guys at  
18 one point.  
19 Q. Was he located here in New York?  
20 A. He was located at different times  
21 during that period in London and New York.  
22 Q. All right. Have you now told me  
23 everything you know about the role or roles that  
24 Kareem played in all the Oakwood transactions  
25 before the bankruptcy?

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1 Fiachra O'Driscoll

2 A. Everything -- I don't know. You would

3 have to ask me specific questions.

4 Q. All right. Well, I'm just trying to

5 understand what his role was. And I think you've

6 identified two things for me.

7 You're not aware, as you sit here

8 today, of anything more than that?

9 A. That's what springs immediate to mind,

10 if I can put it that way.

11 Q. Okay. Do you know whether he was

12 involved in any way in the reverse repurchase

13 facility proposals?

14 A. I don't recall.

15 Q. Okay. Let me see if this document will

16 refresh your recollection. It's Credit Suisse

17 CSFB 173794. For some reason it's two pages, the

18 second of which is blank. And in the lower e-mail

19 you appear to be transmitting a quotation of the

20 terms from some document to him. And if you need

21 to read that to answer the question I'm going to

22 ask you, that's fine.

23 But first I want to ask you if -- what

24 I'm really going to ask you about is his message

25 back to you, which consists of three lines.

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1 Fiachra O'Driscoll

2 MR. CASTANARES: So that will be

3 Exhibit 55, I believe.

4 And, counsel, I don't know whether this

5 was produced as one document or not. But

6 just for the sake of clarity can we -- will

7 you and I -- can you and I agree that the

8 second page can be ripped off this document

9 and we'll just call it a one-page document?

10 MR. OSNATO: That would be fine with

11 me, with the understanding that thereafter

12 there may be --

13 Are you proposing to take it out of the

14 Bates range altogether --

15 MR. CASTANARES: No, I'm just

16 proposing --

17 MR. OSNATO: -- or just for purposes of

18 the exhibit?

19 MR. CASTANARES: This exhibit should

20 consist of one page.

21 MR. OSNATO: That I am perfectly

22 amenable to.

23 MR. CASTANARES: Okay.

24 (CSFB Exhibit 55, One-page e-mail,

25 bearing Bates stamp No. CSFB-50173794, marked

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1 Fiachra O'Driscoll

2 for identification, as of this date.)

3 (Witness looks at document.)

4 THE WITNESS: Yup. Thank you.

5 Q. What transaction is this all about?

6 A. I don't know.

7 Q. Okay. This is clearly not about the

8 asset purchase facility of early 2001, though,

9 correct?

10 A. I think it may be -- it may even be the

11 very beginning of those discussions.

12 Q. Okay. What --

13 Do you have any knowledge of what he's

14 referring to here as the "Oakwood MH deal

15 prospectus"?

16 A. Yes.

17 Q. What is that?

18 A. What it would be, in other words, is

19 the prospectus from the latest, most recent

20 Oakwood Acceptance MH securitization.

21 Q. Okay. And had -- what does the --

22 Do you know what he's referring to here

23 as "the inventory"?

24 A. I actually don't.

25 Q. Okay. Can you tell whether it's the

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1 Fiachra O'Driscoll

2 inventory of manufactured homes as distinguished

3 from an inventory of paper?

4 A. I can't tell. That was the question in

5 my mind when I read this.

6 Q. Okay. And what about where he talks

7 about the "inventory has insurance," can you tell

8 whether that has to do with paper or houses?

9 A. It only confuses me more.

10 Q. Does this document help in any way

11 refresh your memory of what Kareem's role was at

12 this time?

13 A. No, on the contrary. If anything it

14 almost surprises me.

15 Q. And why is that?

16 A. I wasn't aware -- April 14th, 2000 is

17 earlier than I would have thought that we were

18 having discussions, but we clearly were.

19 Q. Okay. And you're talking about the

20 asset purchase, right?

21 A. Yes.

22 MR. CASTANARES: Okay. Let me ask the

23 reporter to mark as Exhibit 56 CSFB 173796

24 and 7.

25

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1 Fiachra O'Driscoll  
2 (CSFB Exhibit 56, Two-page e-mail,  
3 bearing Bates stamp Nos. CSFB-00173796 and  
4 CSFB-00173797, marked for identification, as  
5 of this date.)  
6 MR. OSWATO: Thank you.  
7 MR. CASTANARES: I'm sorry.  
8 MR. OSWATO: That's okay.  
9 (Witness looks at document.)  
10 THE WITNESS: Uh-huh.  
11 Q. Did you respond to this?  
12 A. I don't recall.  
13 Q. Okay. Does this refresh your memory as  
14 to whether you assisted Oakwood in any way in  
15 preparing valuations of its REMIC securities?  
16 A. It doesn't in the least. Actually, I  
17 think it's consistent with what I told you this  
18 morning.  
19 Q. Okay. And do you recall commenting in  
20 any way on the nature of the model that should be  
21 used for such valuations?  
22 A. I don't recall.  
23 MR. CASTANARES: Okay. Thank you.  
24 Q. Do the initials VMP mean anything to  
25 you?

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1 Fiachra O'Driscoll  
2 A. VMP, no.  
3 Q. CNC?  
4 A. Oh, I'm sorry. Yes.  
5 Vanderbilt Mortgage and Finance.  
6 Q. Okay.  
7 A. And CNC was Consec's ticker, stock  
8 ticker, so it means Vanderbilt and Consec.  
9 MR. CASTANARES: Okay. Let me ask the  
10 reporter to mark as 56 --  
11 MR. HOLT: 57.  
12 MR. CASTANARES: I'm sorry, 57 --  
13 Thank you.  
14 -- 492624.  
15 (CSFB Exhibit 57, One-page e-mail,  
16 bearing Bates stamp No. CSFB-00492624, marked  
17 for identification, as of this date.)  
18 (Witness looks at document.)  
19 THE WITNESS: Thank you.  
20 Q. Yes.  
21 What is the transaction that  
22 Mr. Chrystal is referring to in the lowest message  
23 on this page?  
24 (Witness looks at document.)  
25 A. I do recall that we contemplated other

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1 Fiachra O'Driscoll  
2 ideas during this period of time as ways of  
3 providing -- of finding other ways to address the  
4 B2 issue. I don't recall the details or whether  
5 we ever prepared a term sheet for an idea of this  
6 sort.  
7 Q. Okay. Well, this suggests there's some  
8 term sheet here. It's "I finally got the  
9 opportunity to review the late is term sheet," he  
10 says.  
11 A. Yup.  
12 Q. Can you recall what that term sheet  
13 was?  
14 A. I can't actually, no.  
15 Q. And then you reply and talk about  
16 essentially purchasing an interest in Oakwood  
17 Acceptance.  
18 A. Uh-huh.  
19 Q. Was that something you had discussed  
20 with anybody at Oakwood?  
21 A. I don't recall.  
22 Q. Okay. Do you have any idea where this  
23 idea came from?  
24 A. I think it came from one of my  
25 supervisors who said, well, you know, one of

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1 Fiachra O'Driscoll  
2 the -- one of the things that perhaps we should be  
3 thinking about for Oakwood was to try to come up  
4 with some alternative way for them to find  
5 financing within the space. And that perhaps  
6 something that's more of a solution for Oakwood  
7 Acceptance that gives it other roots and other  
8 investors in the mortgage securitizations and in  
9 the mortgage business might make sense.  
10 Q. So in other words, your infusion of  
11 some equity for the purchase of a piece of it  
12 would give it greater liquidity?  
13 A. That was the concept.  
14 Q. All right. And what happened to that  
15 proposal?  
16 A. I don't recall.  
17 Q. Was it ever formalized in any way, was  
18 there ever a term sheet?  
19 A. I don't believe there was.  
20 Q. Was it ever discussed with anyone at  
21 Oakwood?  
22 A. I don't remember that it was.  
23 Q. So as far as you know, it was just  
24 something internal to CSFB as an idea?  
25 A. Yeah. I have no recollection that it

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Fiachra O'Driscoll

not any further.

Q. Okay. And did you ever reply to his comments in response to your question about conflicts?

A. I don't recall.

Q. Okay. Was he correct in the assumption he made about the reference to conflicts that you were making?

A. Seeing as the situation never arose, it's not something that I can answer at this point. Because we never did invest in Oakwood Acceptance in that way.

Q. No. But my question to you is when you wrote about "managing the conflicts" he then replies that he assumes -- he is making assumptions as to what conflicts you're talking about, is he correct that those are the conflicts that you were concerned with?

A. You know, I don't recall. Obviously what I was relating to here specifically in this e-mail was the conflicts of interest as it pertained to this e-mail specifically.

Q. Now, does looking at this e-mail in any way help place in your mind the timing of the

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Fiachra O'Driscoll

beginnings of discussion of the asset purchase facility?

A. It doesn't. It doesn't.

Q. Okay. Is it -- does it seem likely to you that that was being discussed at the same time as whatever proposal was embodied in these e-mails on Exhibit 57?

A. I don't know.

Q. All right. And you said that -- I believe you said in answer to an earlier question that you were thinking of various financing methods; is that correct?

A. We were -- we were continually trying to come up with ways that was going to address both the problem of Oakwood's need to find liquidity for its loans on a more frequent basis than simply the quarterly takeout securitization. And we were also by this point thinking about how to get liquidity for their B2s. In other words, how to get purchasers for their B2s. And those were the two recurring themes throughout that period.

Q. Okay. And what was there about the quarterly takeout securitizations that was

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Fiachra O'Driscoll

unsatisfactory from a liquidity perspective?

A. In essence you can kind of see what happens to a finance company that uses securitization as a takeout, as seeing its loan inventory moved through what's really a sawtooth pattern. So loan inventory -- sorry, this doesn't get in the camera -- loan inventory rises and rises and rises and peaks out the day that the company closes the securitization. At which point it falls abruptly and very dramatically by the amount of the proceeds of that securitization. Then it rises again steadily, falls again steadily, rises again steadily, falls again steadily in a recurring fashion spaced out by the intervals at which the securitizations are done.

The problem with that, of course, is that it means that the company's need for money -- the company's need for in essence money varies enormously depending on whether you're just before a securitization closes or just after a securitization closes.

If you have something -- if you have a flow purchase arrangement, as is common enough, especially in the non-conforming mortgage markets

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Fiachra O'Driscoll

today, it's not an unusual arrangement at all, where you're selling loans to somebody on a flow basis. Then you either have got no zigzag up or down or the zigzag is very, very, very small indeed. So the net result is that whatever financing that you need is closer to the consistent amount of financing that you need for the rest of your business activities.

Q. All right. And what was unsatisfactory about simply a traditional revolving line of credit as a way of solving this problem, if anything?

A. The problem was that Oakwood's need for a traditional revolving line of credit would have been significantly greater than the amount that a company of that size and with its rating would have been able to get.

Q. And did Oakwood have some sort of warehouse or asset purchase facility in place with some different institution than CSFB at this time?

A. If I recall, it had facilities with two institutions at around -- around that time. But the first was a straightforward revolving credit facility, very much like the type that you've

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1 Fiachra O'Driscoll  
2 discussed and that was with a syndicate of banks  
3 led by First Union and arranged by First Union.  
4 The second was that they had a commercial paper  
5 conduit facility which was provided by Bank of  
6 America.  
7 Q. All right. What is a commercial paper  
8 conduit facility?  
9 A. A commercial paper conduit facility is  
10 a very, very common approach to financing of  
11 securities, loans, and a variety of other things.  
12 And it's -- you know, at this stage it's probably  
13 a trillion dollar market in total. And what it  
14 is, is it's a company -- a very small company,  
15 relative to the scale of the financing I'll  
16 describe in a moment -- that purchases securities,  
17 purchases loans either on a permanent basis or in  
18 the type of reverse repurchase arrangement that  
19 I've described before.  
20 And it finances those purchases not  
21 from its own conventional resources, if you will,  
22 but instead by issuing commercial paper to  
23 commercial paper investors as a whole. Usually  
24 short term, less than 30-day, you know, short of  
25 overnight to 30-day commercial paper to the CP

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1 Fiachra O'Driscoll  
2 markets.  
3 The challenge, of course, it's usually  
4 a very small company that's issuing perhaps a  
5 billion dollars in total debt. So the way in  
6 which it actually does that is by having a  
7 backstop, from usually you did this one lead bank  
8 and there's usually a group of other banks, from  
9 one to many also participating in the arrangement.  
10 Whereby in the event that the company is unable to  
11 roll its commercial paper, in other words, the  
12 commercial paper matures, after a day or a week or  
13 whatever and the company can't issue it again, the  
14 banks promise to essentially take out that  
15 commercial paper and to make a loan to the CP  
16 vehicle sufficient to meet its cash needs at any  
17 given point in time.  
18 Q. Now, is either the commercial paper or  
19 the issuer's obligation to the bank collateralized  
20 by the underlying assets?  
21 A. Yes.  
22 Q. Which, or both?  
23 A. I think typically both.  
24 Q. Now does this differ economically from  
25 the company -- from the perspective of say the

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1 Fiachra O'Driscoll  
2 Oakwood company, from either the reverse  
3 repurchase or the asset purchase facilities?  
4 A. It differs in a couple of different  
5 ways. Usually the type of facilities that we're  
6 talking about at something like B of A would be  
7 relatively short term. Not as short term as a  
8 commercial -- sorry, as a reverse repo, which very  
9 often would be as short as -- you know, either  
10 more or less overnight or three months. Usually  
11 these things would be one-year facilities.  
12 Other than that, other than that it  
13 could be quite similar to either of the -- to  
14 either of the other two in the sense that it would  
15 purchase loans on a flow basis from the company  
16 and hold those loans until such time as they were  
17 to go into a securitization. So it could be quite  
18 similar to the loan purchase facility we  
19 discussed.  
20 Q. So -- okay.  
21 And when you're saying the purchase  
22 loans you're talking about what we referred to  
23 earlier as mortgages?  
24 A. Mortgages.  
25 Q. Just to keep our terminology straight

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1 Fiachra O'Driscoll  
2 here I want to make sure I've understood your  
3 answer.  
4 This entity that issues this commercial  
5 paper would buy these mortgages from Oakwood, that  
6 would be the idea?  
7 A. That would be -- correct.  
8 Q. Okay. And it would then hold them  
9 until they got securitized, right?  
10 A. Correct.  
11 Q. And would they be securitized in the  
12 hands of Oakwood, would they somehow get back to  
13 Oakwood or would they be securitized in the hands  
14 of the buyer?  
15 A. It could be either of the above.  
16 Q. And what was contemplated here was  
17 which?  
18 A. In --  
19 MR. OSNATO: I'm sorry to interrupt.  
20 "Here," are you talking about the Bank  
21 of America facility that preceded --  
22 MR. CASTANARES: Yes, thank you.  
23 MR. OSNATO: -- the Credit Suisse line?  
24 MR. CASTANARES: Good clarification,  
25 thank you.

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1 Fiachra O'Driscoll  
2 A. I don't recall.  
3 Q. And was that facility replaced by the  
4 asset purchase facility of early 2001 with CSFB?  
5 A. Yes.  
6 Q. And was the revolver also replaced by  
7 that facility?  
8 A. No.  
9 Q. It continued to exist?  
10 A. No. It was replaced by the later  
11 Foothill facility, if I recall.  
12 MR. CASTANARES: All right. Let's take  
13 five.  
14 MR. OSNATO: Sounds good.  
15 THE VIDEOGRAPHER: Okay. We'll go off  
16 the record. The time is 2:20. This is the  
17 end of tape No. 2. Thank you.  
18 (Recess taken.)  
19 (CSFB Exhibit 58, One-page e-mail,  
20 bearing Bates stamp No. CSFB-00170548,  
21 premarked for identification, as of this  
22 date.)  
23 (CSFB Exhibit 59, One-page e-mail,  
24 bearing Bates stamp No. CSFB-00485279,  
25 premarked for identification, as of this

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1 Fiachra O'Driscoll  
2 date.)  
3 THE VIDEOGRAPHER: Okay. We're back on  
4 the record. It's 2:28. This is tape 3.  
5 THE WITNESS: Thank you.  
6 MR. OSNATO: Thank you.  
7 BY MR. CASTANARES:  
8 Q. As exhibit --  
9 What do I have in front you, 58?  
10 A. Uh-huh.  
11 Q. I fooled myself here.  
12 The reporter has marked CSFB 170548.  
13 (Witness looks at document.)  
14 Q. First, who is Bruce Miller?  
15 A. Bruce Miller was one of the employees  
16 of the New York branch, Credit Suisse New York  
17 branch at that time.  
18 Q. Okay. Was he in the CRM department?  
19 A. Nope. He was one of the branch bank  
20 officials.  
21 Q. And did he have any contact with  
22 Oakwood, to your knowledge, other than what's  
23 reflected in Exhibit 58?  
24 A. Not to my knowledge, no.  
25 Q. Okay. How did it happen that you

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1 Fiachra O'Driscoll  
2 addressed your inquiry to him?  
3 A. I don't know.  
4 Q. All right. Did you ever hear back from  
5 either Miller, or Xanthos, or Irwin on this  
6 proposal?  
7 A. Again, I think this would have been  
8 part of what was an ongoing dialogue with Tom and  
9 with James.  
10 Or to be clear about it, specifically  
11 with Tom. James worked for Tom. I would  
12 occasionally have dialogue with James directly,  
13 but my -- the person who I was going to to get  
14 credit approvals to make proposals, and so on, was  
15 Tom.  
16 Q. All right. What was this proposal in  
17 Exhibit 58?  
18 A. This appears to be identical to what I  
19 recall the terms of the Bank America loan, CP  
20 conduit facility was.  
21 Q. So essentially CSFB would step into  
22 B of A's shoes on this?  
23 A. That's what it would appear to be. I  
24 don't have a specific recollection of the details,  
25 but that's consistent with what my recollection of

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29/06/2006 O'DRISCOLL, Fiachra (vol. 1)

1 Fiachra O'Driscoll  
2 the Bank America terms was.  
3 Q. All right. Do you recognize the  
4 handwriting hear saying "whole loans"?  
5 A. No.  
6 Q. Is that a correct characterization of  
7 this transaction?  
8 A. That is a correct characterization of  
9 the Bank of America transaction. Whole loans was  
10 another term that was used to describe the -- what  
11 we're calling mortgage loans for these purposes.  
12 Q. All right. And now I'd like to ask you  
13 the same question that Mr. Miller did, "What does  
14 'less risky' mean?"  
15 A. In other words, it would seem at this  
16 point in time that I was -- I was proposing to CRM  
17 that a facility that excluded the B2 securities  
18 and only focused on the whole loans instead was  
19 less risky.  
20 Q. Less risky than that?  
21 A. To Credit Suisse.  
22 Than something that was a financing of  
23 the B2s.  
24 Q. Okay. So -- and would the --  
25 Would the reverse repo proposal in late

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1 Fiachra O'Driscoll  
2 '99 and early 2000 have been -- have included a  
3 financing of the B2s?  
4 A. It did include a financing of the B2s.  
5 Q. All right. So were you telling  
6 Mr. Miller and the CRM people that this was a less  
7 risky proposal than the one that you had put to  
8 them a few months before?  
9 A. That is what I seem to be suggesting  
10 here.  
11 Q. Do you recall whether you responded to  
12 Mr. Miller's request?  
13 A. I don't.  
14 Q. And whatever happened to this proposal?  
15 A. This -- this I don't.  
16 Again, you're characterizing each of  
17 these things as being a proposal, which wasn't  
18 really the case. It wasn't how things actually  
19 worked.  
20 Q. Suggestion, idea?  
21 What shall we call it?  
22 A. You kind of characterized it as first  
23 the -- the first reverse repo proposal, the second  
24 reverse repo proposal, the third reverse repo  
25 proposal.

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1 Fiachra O'Driscoll  
2 Typically I would be having a dialogue  
3 every week with Tom Irwin on a variety of  
4 different -- different credit exposures with  
5 different customers along the way, almost every  
6 week.  
7 And there would be an ongoing dialogue  
8 that we would have about what terms on which we  
9 would provide financing to a given customer.  
10 Q. In the course of these weekly  
11 discussions you never asked him what happened to  
12 the 75 million proposal?  
13 A. I don't remember.  
14 Q. Or the 50 million proposal?  
15 A. Typically the kind of answer I would  
16 get from Tom would be, well, have you thought  
17 about the following?  
18 You know, would you think about this,  
19 what if we excluded the B2s?  
20 You know, so the dialogue with Tom,  
21 rather than being -- and some institutions have  
22 perhaps a CRM process where you make a formal  
23 written submission to credit risk management, risk  
24 management then takes that proposal and sends you  
25 back an e-mail or some other written

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1 Fiachra O'Driscoll  
2 correspondence saying approved or rejected. That  
3 wasn't the way things worked within Credit Suisse.  
4 There was -- it was more common in  
5 truth -- it was relatively unusual to have a  
6 situation where -- in fact, very unusual to have a  
7 situation where a proposal was simply yes or no at  
8 the outset. Almost always it was a dialogue with  
9 CRM, as to what kind of counterparty credit  
10 exposure they were content to take.  
11 Q. Were they content to take any?  
12 A. I think you would have to ask them  
13 that.  
14 Q. Did they communicate to you that they  
15 were content to take any?  
16 A. They communicated to me that they were  
17 content to continue a dialogue as to what might  
18 work.  
19 Q. And as long as it didn't involve any  
20 additional request -- exposure to CSFB, correct?  
21 MR. OSNATO: I object to the form.  
22 A. I'm not sure I understand your  
23 question.  
24 Q. Okay. And did you give to Mr. Miller  
25 or to either of the other addressees of this

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1 Fiachra O'Driscoll  
2 e-mail Oakwood's recent results and the deal  
3 documentation?  
4 A. I don't recall.  
5 (Elizabeth Sorenson entered the room.)  
6 MR. CASTANARES: And as Exhibit 59 the  
7 reporter has marked CSFB 485278.  
8 (Witness looks at document.)  
9 Q. So as of 14 September 2000 what is it  
10 that you were telling Kareem?  
11 (Witness looks at document.)  
12 MR. OSNATO: Do you want him to read  
13 the e-mail to you?  
14 MR. CASTANARES: No. I want him to  
15 tell me what this transaction was.  
16 A. I actually don't remember this  
17 dialogue.  
18 Q. Who is John Herbert?  
19 A. John Herbert was one of my colleagues  
20 within the MH and non-conforming mortgage  
21 securitization team.  
22 Q. And is that part of ABS?  
23 A. Yeah.  
24 Q. Okay. And Beth May?  
25 A. Beth May was the woman in investment

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1 Fiachra O'Driscoll  
2 banking who was responsible for -- who had been  
3 made responsible for around that time not just the  
4 building, the house builders, but I think she was  
5 also given responsibility for developing or trying  
6 to develop an investment banking advisory  
7 relationship with people in the manufactured  
8 housing sector. "People" meaning companies.  
9 Q. Was she part of Felt's group?  
10 A. No.  
11 Q. What was the relationship between her  
12 activities and what Felt's group did?  
13 A. Jared wasn't an employee of  
14 Credit Suisse at that time. Jared joined  
15 Credit Suisse with his team, with that entire team  
16 as part of the merger with DLJ.  
17 Q. Okay.  
18 A. Which was within about a month of the  
19 date of this if my memory serves.  
20 Q. Okay. So would it be correct for me to  
21 infer from that the function that Beth May was  
22 performing, at least in so far as this type of  
23 transaction was concerned, was taken over by  
24 Felt's group when it came on?  
25 MR. OSNATO: Objection to the form.

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1 Fiachra O'Driscoll  
2 A. No, that wouldn't be correct.  
3 Q. What would be correct?  
4 A. After the DLJ merger one of the things  
5 that DLJ brought on board was a good many people  
6 who were professional investment bankers who  
7 focused on M&A, on advisory assignments, and on  
8 things of that sort, particularly in sectors like  
9 the house building sector. And they had close  
10 relationships with some people within the  
11 manufactured housing sector in general, Champion  
12 Enterprises being notable among those.  
13 So sometime after this Beth was --  
14 while Beth was still involved a good many of the  
15 people in the investment banking advisory side  
16 were really put with her and with her team on the  
17 investment banking advisory side. But Jared's  
18 team was kept as an entirely separate team whose  
19 role was restructuring.  
20 Q. I see. All right.  
21 Who is Susan Menkhaus, M-e-n-k-h-a-u-s?  
22 A. Susan was a second or third year  
23 associate.  
24 Q. All right. And is she still employed  
25 by CSFB?

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1 Fiachra O'Driscoll  
2 A. She is not.  
3 Q. When did she leave?  
4 A. About two years ago.  
5 Q. All right. After Oakwood's bankruptcy?  
6 A. I -- I guess that was -- well, yeah it  
7 was.  
8 Q. Two years ago?  
9 A. Yeah.  
10 Q. Okay. And you have no recollection of  
11 the transaction that is discussed in Exhibit 59;  
12 is that right?  
13 A. It never turned into a transaction.  
14 Q. Of the proposed transaction or the  
15 suggested or idealized transaction that's in 59?  
16 A. I think this is one of many ideas that  
17 we discussed at that time as to what might work  
18 for both Credit Suisse and the company.  
19 Q. And do you -- okay.  
20 what did --  
21 when you said "Bob told me in the  
22 strictest confidence that the board is likely to  
23 replace the CEO," is that Bob Smith?  
24 A. Yes.  
25 Q. And what did he tell you regarding the

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1 Fiachra O'Driscoll  
2 confidential nature of that information, what did  
3 he say to you?  
4 A. I don't recall.  
5 Q. Your best recollection is on this page,  
6 that's it?  
7 A. Uh-huh.  
8 Q. And would you please answer audibly?  
9 A. Yes.  
10 I beg your pardon.  
11 Q. No problem. Thank you.  
12 MR. CASTANARES: Exhibit 60 is  
13 CSFB 170905.  
14 (CSFB Exhibit 60, One-page e-mail,  
15 bearing Bates stamp No. CSFB-00170905, marked  
16 for identification, as of this date.)  
17 (Witness looks at document.)  
18 THE WITNESS: All right.  
19 Q. Can you tell me what this is all about?  
20 A. Absolutely. This was the period of  
21 time when -- we all remember the Internet madness  
22 along the way. And one of the particular  
23 enthusiasms that actually made a fair amount of  
24 sense within the mortgage securitizations space  
25 was a lot of investors pushed companies to move

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1 Fiachra O'Driscoll  
2 their monthly reporting on their mortgage  
3 securitizations online. So that investors, rather  
4 than phoning up the company and having to be sent  
5 the monthly reporting that would be prepared in  
6 every one of these mortgage securitizations by the  
7 trustee or the servicer, or some combination of  
8 the two, that instead people would be able to  
9 access it on line.

10 And that's something that, frankly, is  
11 standard by now. Pretty much any of these  
12 mortgage companies you go to, if you know the Web  
13 page -- and it's one that will be usually a little  
14 bit difficult to find, because they don't want  
15 necessarily ordinary borrowers looking for the  
16 phone number for -- you know, where they're  
17 supposed to phone, to necessarily be digging into  
18 this information. Not that there's anything very  
19 sinister about it, but it's intended as investor  
20 information.

21 Q. And the kind of information that's  
22 available on this is information regarding the  
23 performance of the underlying mortgages in the  
24 pool?

25 A. Some of it will be the performance of

1 Fiachra O'Driscoll  
2 of this date.)  
3 (Witness looks at document.)  
4 THE WITNESS: Thank you.  
5 Q. Okay. I have a series of questions  
6 about this, I think.  
7 A. Uh-huh.  
8 Q. Who is Alberta Zonca?  
9 A. Alberto Zonca was another one of the  
10 Credit Suisse New York branch officials and he was  
11 one of the people specifically involved in  
12 managing Alpine.  
13 Q. What was Alpine?  
14 A. Alpine was a commercial paper conduit,  
15 as I described, with Bank of America's commercial  
16 paper conduit.  
17 Q. What do you mean by "commercial paper  
18 conduit"?  
19 A. In other words, a company that  
20 purchases loans, and purchases securities, and  
21 finances the purchase of those securities by  
22 commercial paper that's rated highly enough to be  
23 sold to commercial paper issuers in general, by  
24 virtue of the fact that it has a backstop behind  
25 it from, usually a number of -- one or more

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1 Fiachra O'Driscoll  
2 the underlying mortgages in the pool, some of it  
3 will be on the performance of the securities, but  
4 most typically the underlying mortgages.

5 Q. Okay. And when you say "the  
6 performance of the securities," what are you  
7 talking about there --

8 A. In other words --

9 Q. -- the cash flow?

10 A. Cash flows, but more usually simply --  
11 in a slightly simpler form, which is the  
12 reductions in principal amount, for instance, on  
13 specific securities, from one month to the next.

14 Q. As the principal is paid down?

15 A. Exactly.

16 Q. Okay. Do you recall -- while we're  
17 still on this document, Exhibit 60 -- whether, in  
18 fact, David Hunt -- David Rich responded to this  
19 e-mail, to your knowledge?

20 A. I don't.

21 MR. CASTANARES: Exhibit 61 will be  
22 CFSB 173581 and 2.

23 (CFSB Exhibit 61. Two-page document,  
24 bearing Bates stamp Nos. CFSB-00173581 and  
25 CFSB-00173582, marked for identification, as

1 Fiachra O'Driscoll  
2 financial institutions.  
3 Q. So was the transaction contemplated by  
4 this series of e-mails a commercial paper  
5 facility?  
6 A. No. In this -- what was actually  
7 contemplated was -- I think that this is one of  
8 the early term sheets for the loan purchase  
9 facility, in fact. So that what we were actually  
10 doing here was a little bit different from the  
11 usual, in the sense that typically a commercial  
12 paper conduit entity wouldn't provide commitments  
13 for -- actually technically wouldn't provide  
14 commitments at all. And the bank backstops -- the  
15 bank takeouts to the commercial paper would be  
16 364-day evergreen commitments to it.

17 And you may recall that I mentioned  
18 that CP conduit financings generally were kind of  
19 intermediate. In term they were typically one  
20 year, to be precise, 364-day facilities, that was  
21 kind of the norm.

22 With this it had to be done a little  
23 bit differently, because the concept in essence  
24 was that the loan purchase facility would be a  
25 three-year commitment, rather than a shorter term

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1 Fiachra O'Driscoll  
2 364-day commitment.  
3 Q. So why would there be -- what function  
4 would the conduit serve in such a transaction?  
5 A. The conduit would provide the financing  
6 for the entity in question and they would also do  
7 all of the management of the flow purchasing of  
8 the loans.  
9 Q. When you say "the entity in question,"  
10 for whom would the conduit provide the financing?  
11 A. In other words, the securitization  
12 trust that was set up to which the loan purchase  
13 facility was extended, the way in which -- perhaps  
14 the easiest thing is if I just explain how it  
15 works --  
16 Q. Please do.  
17 A. -- in summary.  
18 The way it worked in essence was that a  
19 securitization trust was set up, one that could  
20 purchase loans on a periodic basis, sell them on  
21 to permanent securitization takeout trusts on the  
22 other side.  
23 How it would finance itself is it would  
24 issue a note -- and these notes are most usually  
25 called variable funding notes.

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1 Fiachra O'Driscoll  
2 The reason they called them variable  
3 funding notes is because the amount that's drawn  
4 on that note, unlike with a regular securitization  
5 where it kind of kicks off being a finite amount  
6 and only decreases over time, with a variable  
7 funding note it could decrease and increase over  
8 time.  
9 Then that variable funding note would  
10 be an asset that would be purchased by Alpine  
11 Securities Corporation and it would finance that  
12 purchase by issuing commercial paper to the market  
13 as a whole.  
14 Now, the only way it could issue that  
15 commercial paper is if it had a dollar per dollar  
16 takeout of the commercial paper in the event that  
17 Alpine couldn't -- couldn't issue CP to pay for  
18 the CP that it had matured.  
19 Q. Okay. I may need to break this down a  
20 little bit to understand it.  
21 A. Very good.  
22 Q. You'll forgive me if I lack the  
23 financial sophistication.  
24 Somebody set up a trust that issued a  
25 note?

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1 Fiachra O'Driscoll  
2 A. Correct.  
3 Q. Who set up the trust?  
4 A. I think it was one of Oakwood's  
5 lawyers.  
6 Q. So it was an Oakwood entity?  
7 A. I couldn't answer that.  
8 Q. Okay. Well, do you know whether it was  
9 a CSFB entity?  
10 A. I recall that it was consolidated by  
11 Oakwood.  
12 Q. Incorporated or formed, you mean?  
13 A. No. It was consolidated in the sense  
14 that it was consolidated onto Oakwood's books and  
15 records.  
16 Q. Okay.  
17 A. It was regarded from an accounting  
18 standpoint as being a subsidiary of Oakwood.  
19 Q. Okay. And it issued a note, correct?  
20 A. Yes.  
21 Q. It was the maker of the note?  
22 A. Issuer of the note, yes.  
23 Q. Okay. And was the note payable to  
24 someone?  
25 A. The note would be payable to its

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1 Fiachra O'Driscoll  
2 bearer.  
3 Q. All right. And was it secured?  
4 A. Secured by the underlying loan  
5 inventory.  
6 Q. All right. And those are the end user  
7 paper that we've called mortgages or --  
8 A. Mortgage loans, exactly.  
9 Q. Now, did --  
10 How did the trust get hold of those  
11 mortgages?  
12 A. As a kind of a practical matter?  
13 Q. Or how did it obtain -- either that or  
14 legally, how did it obtain title to them so that  
15 it could --  
16 A. What would happen as a practical  
17 matter, which is probably the easiest way to  
18 actually describe it in the first instance. And  
19 this is where Alpine came in, actually. Because  
20 what Alpine was -- what Alpine really did for a  
21 living was it provided financing on an every day  
22 basis. In the sense that it would be purchasing  
23 securities, it would be taking payments, it would  
24 be -- deliberately it would be selling securities  
25 on a day-to-day basis.

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So what would actually happen in reality was that Oakwood would submit a sale request. I don't remember the exact form of the document, but essentially a piece of paper saying we would like financing in two days time, to be increased by X amount. And we propose selling X plus the appropriate overcollateralization amount of loans to the trust.

And once that process had been processed effectively two days later the loans, which by that point would be -- and the physical loan documents themselves would usually have been delivered to -- I think it was First Union. And once you had notice that those loans had been physically delivered then the -- then Oakwood would be paid for those loans by Alpine from the commercial paper that Alpine had issued.

Q. Oakwood would be paid or the trust would be paid by Alpine?

A. Oakwood would be paid for those loans -- or to -- from a legal point of view the way it would have worked was that, that Alpine would issue commercial paper. It would use the proceeds from that commercial paper to purchase an

Fiachra O'Driscoll

described, that -- the agreement to take out commercial paper if you couldn't roll it.

Q. Was Credit Suisse a beneficial owner of Alpine?

A. I don't -- from a legal point of view, I don't know.

Q. You don't know who held its stock?

A. I don't.

Q. Were you ever an officer, director, or employee of Alpine?

A. No.

Q. Do you know anybody who was?

A. Nope.

Q. Did you ever speak to anybody who purported to speak on behalf of Alpine?

A. I don't recall doing so, no.

Q. If you wanted to find that information out as to -- that is to say, who were Alpine's directors, officers, employees, how would you go about doing that?

A. It would be probably easier for you to do so than I. I imagine it's a matter of a fairly simple request.

Q. I'm sorry?

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Fiachra O'Driscoll

increased amount of the variable funding note. The increased amount of that variable funding note would then provide the wherewithal for the securitization trust to purchase the loans from Oakwood.

Q. Okay. And then -- and so the securitization trust would pay Oakwood for the loans?

A. Precisely.

Q. Okay. From the proceeds that it got from Alpine's purchase of a portion of the variable funding note?

A. Yes.

Q. And was Alpine an existing corporation at that time?

A. Yes.

Q. Was it a CSFB entity?

A. It was an entity sponsored by Credit Suisse.

Q. What do you mean by that?

A. I think from a legal point of view it was actually managed by a special outside board of directors. But Credit Suisse companies probably provided 98 percent of the backstop that I

Fiachra O'Driscoll

A. I would imagine it's a matter of a fairly simple request.

Q. Made to whom?

A. I don't know.

Q. Well, is there anybody at CSFB that you think you could ask that question to that you might get some answer for it?

A. Possibly.

Q. Who is that?

A. I -- that I don't know. I don't doubt that one could find out the information quite quickly.

Q. Okay. Who is Graham Hunt?

A. Graham Hunt was a CRM officer.

Q. Okay. Where did he stand in the hierarchy there relative to Mr. Irwin?

A. I don't know. It's -- he didn't, which is why I'm a little surprised that there was an e-mail that connected Graham to it.

Q. When you say "he didn't" --

A. Correct.

Q. -- he wasn't in the hierarchy --

A. I -- my recollection was that he was transferred to the Tokyo office at about this time

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1 Fiachra O'Driscoll  
2 and he was never actually part of the CRM  
3 hierarchy that dealt with any of these mortgage  
4 transactions that I can recall.  
5 Q. Okay. And what's a TRS?  
6 A. Total return swap.  
7 Q. "Total return swap"?  
8 A. Yes.  
9 Q. And what is that?  
10 A. That was the term of art that was used  
11 to describe the takeout of the commercial paper  
12 for Alpine that I described before in this  
13 particular instance.  
14 Q. What did the swap accomplish?  
15 A. What the swap essentially did was it  
16 promised Alpine that in the event that Alpine  
17 couldn't roll its commercial paper that CSFBI  
18 would pay it for the commercial paper. And it  
19 also promised that in the event that there was any  
20 losses on the variable funding note that were  
21 described that CSFBI would make a payment equal to  
22 the amount of those loss.  
23 Q. So did this effectively make this a  
24 risk free transaction from Alpine's perspective?  
25 A. Yes.

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1 Fiachra O'Driscoll  
2 Q. And that's because CSFBI was taking  
3 upon itself that risk?  
4 A. Yes.  
5 Q. What's CSFBI?  
6 A. Credit Suisse First Boston  
7 International.  
8 Q. Okay. And what is its relationship  
9 with the entity you worked for?  
10 A. It was a sister company. It's  
11 actually -- it's the main derivatives entity and  
12 it's where a great deal of the -- how would I put  
13 it -- the counterparty risk within Credit Suisse  
14 would actually be held.  
15 Q. All right. And would it then lay off  
16 that risk elsewhere?  
17 A. It might or it might not.  
18 Q. Depending on how its book happened to  
19 stand at that time?  
20 A. I was not -- yeah. I was not part of  
21 the team, but, yes.  
22 Q. And did you understand what Mr. Graham  
23 Hunt meant by "obtaining credit approval on the  
24 other side of this trade," what was the other  
25 side?

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1 Fiachra O'Driscoll  
2 A. At this time CSFBI had its own credit  
3 risk management apparatus, so any exposure that --  
4 any significant exposure to a counterparty that  
5 CSFBI to took on had to be handled by this team  
6 within CSFBI. They were merged together around  
7 about this time, so that there was only one credit  
8 risk management function for really the entire  
9 bank. But at that time CSFBI would have had its  
10 own credit officers to review this.  
11 Q. All right. And what was the answer to  
12 the question that Mr. Graham asked, "Why are we  
13 issuing term sheets to clients on behalf of  
14 CSFBI?"  
15 A. Frankly, I'm puzzled that Alberto ever  
16 sent this to Graham in the first place, so I'm not  
17 sure I have an answer for you.  
18 Q. Okay. And did you understand  
19 Mr. Zonca's response when he talked about "CSFB NY  
20 standing between Alpine and CSFBI"?  
21 MR. OSNATO: You're asking for his  
22 understanding of the words?  
23 MR. CASTANARES: I'm asking if he  
24 understood it at the time.  
25 MR. OSNATO: Do you understand the

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1 Fiachra O'Driscoll  
2 question?  
3 THE WITNESS: I do.  
4 MR. OSNATO: Okay.  
5 (Witness looks at document.)  
6 A. That certainly was not how the  
7 transaction was put together, so I'm not sure what  
8 Alberto's getting at.  
9 Q. Okay. And then Mr. Hunt replies at the  
10 top of the page. And he says, among other things,  
11 that "CRM has declined the provision of facilities  
12 to this name twice for credit reasons."  
13 Did you understand the "name" to be  
14 Oakwood?  
15 A. That seems like a reasonable inference,  
16 yes.  
17 Q. Okay. So did you get this e-mail?  
18 A. I did, but I have no recollection of it  
19 at all.  
20 Q. Does it now refresh your memory that  
21 CRM had turned Oakwood down at least once?  
22 A. It wasn't my recollection that there  
23 was ever a formal turndown of Oakwood on any  
24 occasion, much less twice. And I'm a little  
25 puzzled that Graham would ever have been part of

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1 Fiachra O'Driscoll  
2 the dialogue.  
3 Q. So when you got this e-mail did that  
4 sentence come as news to you?  
5 A. I don't remember this e-mail at all.  
6 Q. Did you have the impression that  
7 Mr. Hunt was concerned with the credit exposure  
8 that CSFB would take on if it entered into this  
9 transaction?  
10 A. Well, Graham was not connected to this  
11 business line, the non-conforming mortgage  
12 business line, apart from with respect to one  
13 counterparty, which was Bombardier, the Canadian  
14 company. So I'm not quite sure how or why Alberto  
15 would ever have sent this to Graham in the first  
16 place.  
17 Q. Do you know if anybody ever responded  
18 to Mr. Hunt's e-mail in any way, that's at the top  
19 of the page there?  
20 A. I don't.  
21 Q. Who is Sanjeev, S-a-n-j-e-e-v, Gupta?  
22 A. He was the person at that time who was  
23 Kareem's supervisor and who in turn reported to  
24 John Chrystal.  
25 Q. Okay. And if you've told me this

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1 Fiachra O'Driscoll  
2 before, forgive me.  
3 What was Mr. Chrystal's title?  
4 A. I don't remember his title at the time.  
5 Q. But his function then?  
6 A. His function was -- he was -- he was  
7 the supervisor of a number of different  
8 businesses, including Joe Donovan's business at  
9 the time, which included my business, the asset  
10 securitization business. It also included  
11 Sanjeev Gupta's business, which was a credit  
12 derivatives business, and a number of other  
13 businesses in the -- in this structured credit  
14 space.  
15 Q. And could you just give me a definition  
16 of what you mean by "structured credit space."  
17 A. In other words, transactions where --  
18 transactions such as mortgage securitizations,  
19 such as asset securitizations, such as credit  
20 default swaps, such as credit -- CDOs, such as the  
21 business I'm working on at the moment.  
22 Q. And you work within that branch as  
23 well?  
24 A. I worked in the asset securitization  
25 group at that time.

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1 Fiachra O'Driscoll  
2 Q. And that was part of -- was that part  
3 of the organization you just described to me?  
4 A. Yes.  
5 MR. CASTANARES: Okay. I'll ask the  
6 reporter -- or I'll mark as Exhibit 62  
7 CSFB 156363 and 4.  
8 MR. OSNATO: Thanks.  
9 (CSFB Exhibit 62, Two-page e-mail,  
10 bearing Bates stamp Nos. CSFB-00156363 and  
11 CSFB-00156364, marked for identification, as  
12 of this date.)  
13 (Witness looks at document.)  
14 THE WITNESS: Great.  
15 Q. Okay. What is Mr. Okuyama -- what  
16 transaction is Mr. Okuyama referring to?  
17 A. He was an employee in the financial  
18 engineering group at the time. This was referring  
19 to a structure in which on one or more occasions  
20 we actually included a preexisting B2 security  
21 from another transaction in as part of a new  
22 securitization.  
23 Q. So that would form part of the  
24 collateral pool for one of the tranches of a new  
25 securitization?

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1 Fiachra O'Driscoll  
2 A. It would form part of the collateral  
3 pool for the new securitization in general.  
4 Q. Okay. All right. And that was the  
5 transaction being contemplated by Mr. Okuyama's --  
6 A. E-mail, yup.  
7 Q. -- e-mail?  
8 Okay. So this would have referred to a  
9 securitization contemplated for sometime late in  
10 2000 or early 2001?  
11 A. I don't remember the date, but we  
12 actually did -- we did the securitization.  
13 Q. Okay. And did that include the B2s?  
14 A. It included the B2s.  
15 Q. And did it wind up only getting  
16 18 million?  
17 A. I don't remember the numbers.  
18 Q. Okay.  
19 A. These certainly weren't the final  
20 numbers.  
21 Q. And how do you know that?  
22 A. Because I do remember the numbers were  
23 different from this. I've forgotten what they  
24 were.  
25 Q. Who is Jack MacDowell?

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1 Piachra O'Driscoll

2 A. Jack was an analyst in the ABS group at  
3 that time.

4 Q. Worked for you?

5 A. Worked for -- really for John and for  
6 Susan, but worked as part of my team, yes.

7 Q. All right. And who is Philip Li, L-i?

8 A. Phil Li was another financial engineer.

9 Q. And who is Janie Lee, L-e-e?

10 A. Well, she's actually now my wife.

11 Q. All right. Who was she then?

12 A. Her role at that time was --

13 Q. Congratulations.

14 Who was she then?

15 A. She was a manager in the financial  
16 engineering group.

17 Q. And what was she referring to, if you  
18 know, "if we are shy of their bogey," what is she  
19 talking about there, do you know?

20 A. I think what she was saying was there  
21 might have been some -- some number that Oakwood  
22 had in mind -- and I don't recall what the number  
23 was -- by way of proceeds that Oakwood was hoping  
24 to get out of putting the B2s into a new  
25 securitization with loans.

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1 Piachra O'Driscoll

2 MR. CASTANARES: I'm sorry, could you  
3 read that back to me, please?

4 It's all right. Never mind. I'll just  
5 re --

6 A. Would it be helpful if I can expand it  
7 a little bit?

8 Q. Yes.

9 A. And how the whole thing works, because  
10 I know it's a little confusing.

11 MR. OSNATO: That's fine. But let's  
12 just -- I need to hear what the question is.

13 So can you read back the question,  
14 please?

15 MR. CASTANARES: Yes.

16 (Record read.)

17 A. The way that the transaction worked was  
18 that we put together a securitization that was a  
19 REMIC trust as before. But whereas up until this  
20 point all of the -- all of the assets of the  
21 REMIC, the securitization entity, were individual  
22 mortgage loans. In this situation, as well as  
23 individual mortgage loans. We also put in a B2  
24 security, one or more B2 securities. I don't  
25 remember if it was one or if it was more than one

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1 Piachra O'Driscoll  
2 dollar compared to the face value of the B2, but  
3 it would issue a new guarantee of some new tranche  
4 of the new securitization that included those old  
5 B2s?

6 A. My recollection was that of this  
7 particular deal, that the B2 wasn't guaranteed up  
8 until the time of the Berkshire Hathaway, Lotus  
9 transaction series.

10 Q. Okay. And so that was an unguaranteed  
11 B2 that went into the Lotus transaction series?

12 A. Yup.

13 Q. When did the Lotus transaction series  
14 occur?

15 A. It was -- it was the summer of 2002.

16 Q. Okay. Did it occur over a period of  
17 time?

18 A. There was one initial one and then  
19 there were a number of subsequent additions to  
20 that first transaction.

21 Q. They were all then either in the summer  
22 of 2002 or afterward?

23 A. Correct.

24 Q. Okay.

25 A. I'm sorry. I beg your pardon, summer

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2 dollar compared to the face value of the B2, but  
3 it would issue a new guarantee of some new tranche  
4 of the new securitization that included those old  
5 B2s?

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7 particular deal, that the B2 wasn't guaranteed up  
8 until the time of the Berkshire Hathaway, Lotus  
9 transaction series.

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16 Q. Okay. Did it occur over a period of  
17 time?

18 A. There was one initial one and then  
19 there were a number of subsequent additions to  
20 that first transaction.

21 Q. They were all then either in the summer  
22 of 2002 or afterward?

23 A. Correct.

24 Q. Okay.

25 A. I'm sorry. I beg your pardon, summer

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1 Fiachra O'Driscoll  
2 of 2001.  
3 Q. "2001"?  
4 Okay. Who is Eric Rosenfeld?  
5 A. I remember that name, but I don't  
6 remember.  
7 Q. How about Hans Bald?  
8 A. Hans Bald was another one of the senior  
9 managers of the Alpine entity, so Alberto Zonca's  
10 supervisor.  
11 Q. Did those people hold any positions at  
12 CSFB as distinguished from positions they held at  
13 Alpine?  
14 A. They were officers of the Credit Suisse  
15 New York branch.  
16 Q. And were they also officers of Alpine,  
17 or do you know?  
18 A. I don't know.  
19 Q. But they did purport to speak for  
20 Alpine?  
21 A. I don't know.  
22 MR. CASTANARES: All right. As  
23 Exhibit 63 we'll mark 492629 through 11.  
24 (CSFB Exhibit 63, Three-page e-mail,  
25 bearing Bates stamp Nos. CSFB-00492629

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1 Fiachra O'Driscoll  
2 through CSFB-00492631, marked for  
3 identification, as of this date.)  
4 (Witness looks at document.)  
5 THE WITNESS: Thank you.  
6 Q. Is this the transaction that later  
7 became the purchase facility that included the  
8 warrant in early 2001?  
9 A. It appears to be a term sheet  
10 summarizing what turned into that.  
11 Q. All right. And was this document  
12 shared with Oakwood, to your knowledge?  
13 A. I don't recall.  
14 Q. Was Kareem then working for CSFB?  
15 A. He was working for CSFB.  
16 Q. All right. And I have a bunch of names  
17 here I wanted to ask you if you --  
18 Roger Machlis, M-a-c-h-l-i-s?  
19 A. He was an officer in the legal and  
20 compliance department.  
21 Q. And Simon Davidson?  
22 A. He was -- he was a member of the CSFB  
23 team in London, which was where Kareem was by this  
24 point.  
25 Q. Edmond Curtin, C-u-r-t-i-n?

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1 Fiachra O'Driscoll  
2 A. He was a lawyer with CSFB in London.  
3 Q. Okay. Simon Page?  
4 A. I don't remember who Simon was.  
5 Q. Stuart Pirth?  
6 A. He was another CSFB person in London.  
7 Q. I notice all the CSFB people seem to  
8 have a CSFB e-mail address, except Mr. -- except  
9 Kareem, can you tell me why that is?  
10 A. Kareem appears to have been sending  
11 this from his home e-mail account at 11 o'clock at  
12 night.  
13 Q. Okay. Just so you're not misled. By  
14 the way, we've seen a number of e-mails that have  
15 been adjusted to Greenwich Mean Time, so we don't  
16 really know whether this is -- we don't know where  
17 it's 11 o'clock at night.  
18 A. He could have been sending it at  
19 4 o'clock in the morning for all I know.  
20 MR. CASTANARES: For all we know,  
21 that's true. Okay.  
22 Exhibit 64 will be CSFB 495340.  
23 (CSFB Exhibit 64, One-page e-mail,  
24 bearing Bates stamp No. CSFB-00495340, marked  
25 for identification, as of this date.)

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1 Fiachra O'Driscoll  
2 A. Uh-huh.  
3 Q. Do you recall receiving this?  
4 A. I don't recall receiving this.  
5 Q. Okay. Do you recall responding to it?  
6 A. I don't.  
7 Q. Or -- I guess I should ask a better  
8 question.  
9 Do you recall supplying the information  
10 that's requested here to Mr. Xanthos?  
11 A. I recall responding to a fairly wide  
12 list of items that Tom had requested and I think  
13 that this request from James probably formed part  
14 of that, which would have been along these kind of  
15 lines.  
16 Q. Okay. Now, what was the 15 million in  
17 fees payable to CSFB?  
18 A. I think that that was the sum total of  
19 the spread payable to CSFB over the three years.  
20 Q. Was that the total compensation that  
21 CSFB would receive for providing this line?  
22 A. If it -- this together with the  
23 warrants if the transaction had lasted for the  
24 full three years, which it didn't.  
25 Q. Okay. So some of that 15 million was

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1 Fiachra O'Driscoll  
 2 earned as the facility was provided; is that  
 3 correct?  
 4 A. Some of it was.  
 5 Q. All right. And the reason it did not  
 6 pay --  
 7 I gather it paid less than the full  
 8 15 million?  
 9 A. Much less.  
 10 Q. Was there an up front portion of the  
 11 fee?  
 12 A. Yes.  
 13 Q. And what was that?  
 14 A. I don't remember, but it was a lot less  
 15 than 15.  
 16 Q. Okay. And was there a covenant  
 17 established, to your recollection, that Oakwood  
 18 maintain a \$75 million line of credit?  
 19 A. Not to my recollection, no.  
 20 Q. What about gaining control about  
 21 "Oakwood's underwriting process," what was your  
 22 understanding of that?  
 23 A. James -- again, James was relatively --  
 24 he was an associate who reported to Tom Irwin.  
 25 What he meant by that I don't know, because

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1 Fiachra O'Driscoll  
 2 obviously we never did have control of Oakwood's  
 3 underwriting process.  
 4 Q. And by "underwriting process" did you  
 5 understand -- or as you use the term right now, do  
 6 you mean credits criteria by which they would  
 7 either grant or deny credit to a proposed  
 8 purchaser of their product?  
 9 A. Yes. And I think in essence what he  
 10 actually means is, if we can look back to  
 11 Exhibit --  
 12 MR. OSNATO: No, no.  
 13 THE WITNESS: Oh, sorry.  
 14 MR. OSNATO: Is that the Kareem e-mail?  
 15 A. If we can go back to Exhibit 63, if I  
 16 have the terminology right.  
 17 MR. OSNATO: Which is the e-mail from  
 18 Kareem's Hotmail account?  
 19 A. Yeah, the Kareem e-mail.  
 20 And you can see that one of the key  
 21 things -- one of the key aspects of the structure  
 22 of any transaction like this is what are the  
 23 receivables that -- what are the mortgage loans  
 24 that are eligible for such a transaction. Because  
 25 one of the things that's important, of course, is

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1 Fiachra O'Driscoll  
 2 that ultimately this loan purchase facility is  
 3 going to fill up to its maximum amount, which I  
 4 think is 200 million. And literally fill up  
 5 unless you can -- unless you can accomplish to  
 6 take out securitizations on the other side.  
 7 So one of the things that's key in any  
 8 of these situations is to ensure that the nature  
 9 of the loan -- the nature of the mortgage loans  
 10 that are going into the loan purchase facility are  
 11 ones that you'll be able to distribute out to  
 12 investors in the form of a securitization or in  
 13 some other form on the other end.  
 14 So one of the things that you'd see  
 15 within any of these kind of things, whether it be  
 16 a loan purchase facility like this, a CP conduit  
 17 or warehouse financing, any of these kind of  
 18 things, was a list of the criteria within  
 19 Oakwood's -- within Oakwood's underwriting, within  
 20 Oakwood's loan originations, effectively that the  
 21 portfolio was -- as a whole or individual loans  
 22 within the transaction would have to be consistent  
 23 with.  
 24 Q. Okay. Mr. Xanthos here isn't saying we  
 25 need to understand Oakwood's underwriting process.

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1 Fiachra O'Driscoll  
 2 We need to get control of it, he says, did that  
 3 mean anything to you.  
 4 A. I don't think James at this point in  
 5 his career -- and I don't mean to disparage James,  
 6 because he's a very highly accomplished  
 7 professional, was before and is now, I don't think  
 8 that James at this point actually understood the  
 9 way that these things worked.  
 10 Q. I see.  
 11 And on what do you base that?  
 12 A. My experience of working with James.  
 13 Q. I see.  
 14 So how does that relate to his  
 15 statement that you need to gain control of the  
 16 underwriting process?  
 17 A. I don't know, because that was never a  
 18 feasible thing, nor would it even have been  
 19 advisable from Credit Suisse's point of view or  
 20 any other bank to put in -- to do what would be  
 21 necessary to do that, which is to essentially put  
 22 in loan officers, which is an expertise that we  
 23 don't -- we don't have loan officers who could  
 24 actually underwrite the individual loans.  
 25 Q. Where is James now?

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A. I don't know, actually.

Q. Well, I think you said he's an accomplished professional now. I took it from that that you have some idea --

A. Well, I take it he's not dead. I've forgotten where he went to, but...

Q. How long ago did he leave CSFB?

A. I don't remember. I'm not even sure if he has left CSFB.

Q. All right. Well, there we go.

But wherever he is you've surmised that he's an accomplished professional, correct?

A. Well, he may have quit the business entirely. The last time I saw him he was very good.

MR. OSNATO: I can confirm he is alive and he is no longer with CSFB.

MR. CASTANARES: You know, I think I got that message from you earlier. But I thank you, counsel. Good.

MR. OSNATO: Certainly.

MR. CASTANARES: As Exhibit 65 we'll mark CSFB 512061.

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Fiachra O'Driscoll

(CSFB Exhibit 65, One-page e-mail, bearing Bates stamp No. CSFB-00512061, marked for identification, as of this date.)  
(Witness looks at document.)

THE WITNESS: Thank you.

Q. Now, when Mr. Irwin tells you that he has "represented to Dick that" you "can control and manage underwriting standards," does that indicate to you that Mr. Irwin also didn't understand this transaction?

A. I think here Tom is -- what Tom is talking about is exactly what I described before, which is the loans -- to ensure that the loans that are getting purchased into the transaction are ones that are going to be consistent with the -- with what we believe we can sell out in a securitization on the other side.

Because as you can see here, this reference to a list of 35 points, I think it was somewhat less than that, but there was a very, very long list of points, an extended list of the list that you saw in Kareem's e-mail that went through a relatively long list of points that we felt were important that the loan pool consist of

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Fiachra O'Driscoll

to ensure that the loans were ones that we could subsequently market out on the other side.

Q. All right. Well, after receiving this e-mail did you come to believe that you could control Oakwood's underwriting standards any more than you felt earlier when Mr. Xanthos had commented upon that subject?

A. No.

Q. Okay. And did you read the Moody's report that was attached to this?

A. I don't recall.

Q. Okay. Can you recall whether, in fact, Moody's was showing that the quality of underwriting had declined?

A. I can't recall.

Q. If we assume that the Moody's report attached to this document -- and I can tell you I believe this is the document -- this document is in the form produced to us by CSFB. I don't believe the attachment was with it. I could be proved horribly wrong in that regard, but I believe that's correct.

MR. OSNATO: I don't think that you're wrong. I think this document was produced in

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hard copy format. Whose ever files it resided in had only the e-mail.

MR. CASTANARES: Okay. So we don't have the attachment.

Q. But let's assume for the purposes of discussion that Moody's report shows what Mr. Irwin says it showed.

Would that be consistent with your earlier testimony today that you thought that the underwriting standards were improving consistently up to the date of bankruptcy?

A. I'd rather not make the first assumption. Because I think that -- I remember this e-mail, one of the ones I do remember. And there was two things about it. The first was the bit here about "as you know, Dick Thornburgh." I wasn't actually at this meeting with Dick Thornburgh and hadn't been invited to it.

That the CRM guys had essentially gone off and had their own meeting internally to discuss it internally within CRM and hadn't involved any of the people from the asset securitization group in that dialogue.

And my recollection was that I

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1 Fiachra O'Driscoll  
2 disagreed with the points that Tom was making.  
3 Tom was also somebody who would on occasion fly a  
4 trial balloon, if you will, would try to be a  
5 little inflammatory to see whether you disagreed  
6 with something or whether you could make  
7 counterpoints to shoot down his points.

8 Q. So did you reply to this e-mail?

9 A. I don't recall if I replied in writing,  
10 but I know that the ultimate outcome from this  
11 e-mail was this list of 35 points. I don't think  
12 it was 35 in the end, but it was actually a very  
13 long list that we planned to use to address the  
14 concern.

15 Q. Okay. And the 35 points or whatever  
16 number it actually was dealt with Oakwood's  
17 underwriting standards; is that right?

18 A. To be precise, he's using the language  
19 here again a little bit loosely. But what those  
20 35 points were there for, and this was something  
21 he was well aware of, was what those would do is  
22 to ensure that the loan -- the average loan  
23 production that went into the loan purchase  
24 facility, the average mortgage loan production  
25 that went in the loan purchase facility were ones

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1 Fiachra O'Driscoll  
2 that were consistent with these points, that we  
3 believed that there was going to be no issue with  
4 the takeout securitization of.

5 Q. Okay. So they were points that related  
6 to Oakwood's underwriting standards; is that  
7 right?

8 A. They would have related to -- they --  
9 we never attempted at any point to tell Oakwood  
10 you can't underwrite this loan or you can't  
11 underwrite that loan. What we did do was we  
12 constructed the facility in such a way that we  
13 were reasonably confident that the aggregate  
14 production as a whole that was going into the loan  
15 purchase facility was -- was loans that we were  
16 confident we would be able to get through the  
17 rating agencies, get rated, and get distributed to  
18 the market.

19 Q. And what did you contemplate that  
20 Oakwood would do with mortgages that it had that  
21 were outside the cap in the line?

22 A. By and large -- by and large, with the  
23 exception of fairly short intervals of time, I  
24 think they stayed within the cap. There would be  
25 loans that would fall from time to time outside

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1 Fiachra O'Driscoll  
2 the cap. And Oakwood funded those primarily  
3 through I think the Foothill line eventually or  
4 through other financial resources broadly.

5 I certainly do recall that when the  
6 Foothill line was put in place those ones that  
7 weren't eligible for the loan purchase facility  
8 were pledged to the Foothill line.

9 Q. All right. Now, I see that there's a  
10 reference here to the DPAP program --

11 A. Uh-huh.

12 Q. -- is that down payment assistance  
13 program?

14 A. Yup.

15 Q. And that was viewed as a negative from  
16 an underwriting perspective; is that correct?

17 A. Yes.

18 Q. And as of this time had you had any  
19 awareness of Oakwood's LAP program?

20 A. Yes.

21 Q. When did you first become aware of it?

22 A. It was a technique that Oakwood had  
23 used for a very, very long time. I'm not sure  
24 that I could say a date. But certainly very early  
25 in my career I became aware that loan assumptions

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1 Fiachra O'Driscoll  
2 were a technique that was being used, not just by  
3 Oakwood, but really fairly generally throughout  
4 the industry.

5 Each one of them, the major -- not all  
6 of the major finance companies, but nearly all of  
7 the major finance companies did something like it.  
8 Consec's one was called DTOE, default transfer of  
9 equity. There were different kind of acronyms and  
10 names for the same kind of program, but it was a  
11 technique that was used very broadly in the  
12 industry for many, many, many years.

13 Q. Was Oakwood using that technique when  
14 you came on board in 1996?

15 A. I believe it was. I believe it was.

16 Q. And as far as you know, was it still  
17 using that technique as of January of '01?

18 A. I believe it was.

19 Q. Had Oakwood ever discussed that program  
20 with you in any way?

21 A. Yes, I'm sure they had.

22 Q. Had Oakwood ever discussed with you the  
23 effect that the LAP program had on Oakwood's  
24 liquidity?

25 MR. OSNATO: Object to the form of the

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1 Fiachra O'Driscoll  
 2 question.  
 3 A. The only point at which the impact on  
 4 Oakwood's liquidity was discussed was very close  
 5 to the date of the termination of the loan  
 6 assumption program.  
 7 Q. And when was that?  
 8 A. I believe that was in the summer of  
 9 2002, spring or summer of 2002.  
 10 Q. Right around the time you made a  
 11 presentation to Berkshire?  
 12 A. I would need to go back and refresh my  
 13 recollection as to the dates.  
 14 Q. Okay. And what brought about, if you  
 15 know, the termination of the LAP program?  
 16 A. From what I knew of it, I was told by  
 17 Doug Muir that Oakwood Acceptance had increased  
 18 dramatically in the months up to that point its  
 19 use of the loan assumption program, very  
 20 dramatically.  
 21 And as I understand it -- understood  
 22 it, essentially what happened was, that I was  
 23 phoned by Doug Muir a day or so before the press  
 24 release went out announcing that they were  
 25 terminating the loan assumption program. And was

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1 Fiachra O'Driscoll  
 2 essentially given a heads up so that we wouldn't  
 3 be surprised that this announcement was made  
 4 public.  
 5 And at that point they -- Doug told me  
 6 that OAC had dramatically increased the use of the  
 7 loan assumption program in the three months prior  
 8 to that. It had chewed up far more of the  
 9 company's available cash assets than were  
 10 expected. And that the senior executives, I don't  
 11 recall specifically who, but the senior executives  
 12 had taken a decision to terminate it.  
 13 Q. And is this the first you knew of this?  
 14 A. The first I knew of?  
 15 Q. The increased use of it.  
 16 A. I was aware that they had increased the  
 17 loan assumption program somewhat. They increased  
 18 it very dramatically in those months and that  
 19 wasn't something I was aware of.  
 20 Q. How did you become aware that they had  
 21 increased it at all?  
 22 A. I don't know. I don't know.  
 23 Q. When did you become aware that they had  
 24 increased it?  
 25 A. Sometime in the course of 2002.

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1 Fiachra O'Driscoll  
 2 Q. Now, did the loan assumption program in  
 3 your view have any effect on the performance of  
 4 the mortgages in the portfolio that would have any  
 5 influence on any aspect of the underwriting  
 6 process?  
 7 THE WITNESS: We're just coming up on  
 8 an hour. Do you mind if I just take a little  
 9 pit stop?  
 10 MR. CASTANARES: Not at all.  
 11 MR. OSNATO: Okay. Thank you.  
 12 THE VIDEOGRAPHER: Going off the  
 13 record, 3:31, tape 3.  
 14 (Recess taken.)  
 15 THE VIDEOGRAPHER: We're back on the  
 16 record. It's 3:39. This is tape 3.  
 17 MR. CASTANARES: I withdraw the pending  
 18 question.  
 19 BY MR. CASTANARES:  
 20 Q. When you were told by Mr. Muir of the  
 21 dramatic increase in the LAP did he tell you why  
 22 the company had done that?  
 23 A. On the contrary. He expressed his  
 24 dismay that it had happened.  
 25 And the -- he indicated that OAC.

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1 Fiachra O'Driscoll  
 2 Oakwood Acceptance, had, if not legally exceeded  
 3 their authority certainly exceeded -- had  
 4 proceeded to do much more of this, with much more  
 5 cash flow consequences than the senior management  
 6 was aware of or had any authorization to do.  
 7 Q. So he suggested to you that this came  
 8 as a surprise to him, too?  
 9 A. He suggested it came as a surprise to  
 10 him, too.  
 11 Q. And did he say that it came as a  
 12 surprise to other Oakwood senior management?  
 13 A. Yes.  
 14 Q. Specifically, Mr. Standish?  
 15 A. Yes.  
 16 Q. Anybody else?  
 17 A. That's what I recall.  
 18 Q. Okay. And did he tell you who had  
 19 taken the decision to create this dramatic  
 20 increase in the LAP?  
 21 A. He actually did, yes.  
 22 Q. And who did he say?  
 23 A. Bob Smith.  
 24 Q. Did you discuss this with Mr. Smith at  
 25 about that time?

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A. I did not.

Q. And did he, did Mr. Muir convey to you any understanding or any statements on what had motivated Mr. Smith to do this?

A. I don't recall precisely. I don't recall.

Q. I take it -- and I take it Mr. Muir suggested to you that this had had some sort of disadvantageous consequences for Oakwood?

A. He didn't tell me exactly how much. It was fairly -- we would sometimes -- because we didn't have access to information, other than the normal, you know, publicly available filings. We didn't normally get information ahead of the company's announcement with respect to its general financial condition when it would make its quarterly disclosures or annual disclosures.

So -- but every so often you would get a phone call like this from them saying I just want to give you a heads up that, you know, you're going to see the following in the paper tomorrow morning. Well, not in the paper, on the Bloomberg screen or whatever form it would come in.

Typically there wouldn't be numbers

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attached to it, sometimes there would be. But what he did make clear at that point was that it had had a -- that a significant amount of money had gone into this substantial increase in the LAPs.

Q. Now, did you understand that the effect of the LAP was that you take a default or a repo and treat it in such a way that it was no longer classified as a default or a repo for various purposes?

A. I don't think that's an accurate understanding.

Q. Okay. How is it -- how am I wrong?

A. What any of these loan assumptions actually did was in their original formulation, if a borrower became seriously delinquent one of the standard things that the servicers would do, as I related earlier on, was they tried to endeavor to try to find if there were ways to fix the problem.

And if there weren't ways -- if it wasn't a short-term problem, if it was a persistent problem, one of the things that they would ask for within most of the mortgage lenders in the space was, well, do you have somebody else

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who can take over the loan from you?

Is there a parent, is there a brother or sister who wants to take on the home?

Is there someone in your neighborhood that you know who would take on -- who would move into the home and to take over the obligations of the loan itself?

And essentially what a loan assumption was, was in essence that. So what it did was it took a loan which wasn't necessarily defaulted at that point in time, but almost certainly was delinquent at that point in time, and caused a new obligor to take over that loan who would not be delinquent.

And that's it in a nutshell.

Q. In that situation, if there were no LAP that loan would become classified as a default or a repo, correct?

A. Not necessarily, because it wouldn't necessarily have been the only servicing technique that Oakwood would have used. It's reasonable to assume that there's a significant percentage of them that would have eventually become repos. And without a doubt, one of the key reasons that

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Oakwood, and Consec, and Clayton, and everybody else -- not everybody, but many other mortgage finance companies had this program was to avoid repos. Because it was easier and cheaper to get somebody else to take over the loan than it was to repossess the house, take it away from its site, take it back to a dealership and remarket it.

Q. Well, you say it was easier and cheaper, but you did understand that it had negative financial consequences for Oakwood Acceptance as well, correct?

A. The negative financial consequences, though, were generally less than the cost of repossessing the home and remarketing it.

Q. Okay. And what were those negative financial consequences that it had?

A. The negative financial consequences came from the fact that the payments that were delinquent on the loan would not be made up immediately by the borrower who took over the loan, but instead would typically be added to the back end of the loan. Meaning to the -- the payments to be made on the loan at its final maturity. So instead of having immediate cash in

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2 hand for those delinquent payments, instead this  
3 was going to be cash you were going to get in  
4 either 30 years time or whenever the loan was  
5 going to be prepaid.

6 Q. Okay. Now, by using the LAP as to a  
7 particular loan Oakwood was able to avoid having  
8 it classified as a repo, correct?

9 A. Correct.

10 Q. And it was therefore possible to use  
11 that particular mortgage as collateral in certain  
12 lending facilities and in securitizations,  
13 correct?

14 A. Correct.

15 Q. Where it would not have been possible  
16 to use it if it had been classified as a repo,  
17 correct?

18 A. Well, generally speaking the loans --  
19 the original loans as they were would in almost  
20 all cases be already in an existing  
21 securitization.

22 Q. Okay. And what would be the effect --  
23 if all of those loans that had been used, that had  
24 been treated under the LAP had not been treated  
25 under the LAP and had become repos or a

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2 always had the excess interest strip within the  
3 transaction structure. In other words, the  
4 difference between the coupon rate on the loans  
5 and the coupon rate on the REMIC securities that  
6 were issued out.

7 So any losses that occurred, first of  
8 all, were applied to that excess interest amount.  
9 So Oakwood would get out of the securitization,  
10 the excess interest net of the amount of these  
11 losses.

12 The second was that if the losses had  
13 become so large that the excess interest strip was  
14 in fact zero -- and that was without a doubt the  
15 case with some of these situations at that point  
16 in time -- then there could potentially be a  
17 guarantee payment on a B2 security, for instance.

18 Q. Would it affect the marketability of  
19 the B2 securities?

20 A. Well, by that point those B2 securities  
21 would have been sold, with the exception of some  
22 of the more recent B2 securities, which were  
23 obviously of more recent vintage and where that  
24 generally wasn't occurring.

25 Q. And would the classification of these

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2 substantial portion of them had, what effect would  
3 that have had upon the securities in the REMIC  
4 securitizations that had occurred where those  
5 loans form part of the collateral pool?

6 A. In the event that the loans -- in the  
7 event that the loans had simply proceeded directly  
8 to repo?

9 Q. Yes.

10 A. Yeah, in that situation that repo would  
11 have been remarketed, presumably at a loss.  
12 Because usually these things, taking account of  
13 the costs of the repossession process and selling  
14 the home, almost invariably there was going to be  
15 a -- the proceeds of that were significantly less  
16 than the principal balance of the loans, plus the  
17 cost of doing it. So you would have a loss within  
18 the securitizations equal to whatever that amount  
19 was.

20 Q. And what effect would that then have on  
21 Oakwood?

22 A. That would have a negative effect.

23 Q. How so?

24 A. In several different ways. The first  
25 way was that Oakwood, as I mentioned, almost

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2 loans as repos, but for the LAP program, had had  
3 any effect on future securitizations?

4 A. Potentially it would.

5 Q. And how so?

6 A. It might have affected investors  
7 understanding of the losses that they were exposed  
8 to within the securitizations themselves.

9 Q. Investors would better understand the  
10 level of defaults that was occurring as  
11 distinguished from the appearance of fewer of them  
12 that was created by the use of the LAP program?

13 A. I think I probably misstated myself.  
14 There was another more fundamental driver going  
15 on, which was that one of the reasons for using  
16 the LAP was by that point in time Oakwood was  
17 reducing the number of sales centers that it had.  
18 But the retail sale centers had two roles. The  
19 first role was to sell new homes. The second role  
20 was to sell the repossessed homes that Oakwood had  
21 taken in.

22 One of the challenges was that every  
23 one of these repossessions that was done  
24 essentially crowded out, from Oakwood's point of  
25 view, the ability to sell a new home. Because

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more often than not all these homes ended up in a sale center. Every customer who walked away with a home ended up with either a new home or with a preowned repossessed home. And the net result of that was that inevitably the number of new homes that were sold was less.

It also meant there was more pressure on the retail sales centers to sell these repossessed homes that they had cluttering up the site more cheaply. So the net result was that the loss severities on these repo repossessions -- the loss severities on the repossessed homes was increasing largely because the sales centers were finding it harder to remarket these things.

So the question of whether a loan assumption or whether to repossess a home was more economically efficient was -- was not a clear one. But by and large, for a lot of the time period a loan assumption was actually cheaper from Oakwood's point of view than repossessing a home and working it through the process.

Q. Would the classification of some of these loans as either repos or on the other hand not doing so because of the LAP program have any

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A. I don't recall expressing myself. I do recall that he didn't ask me my opinion.

Q. Okay.

A. It was a fait accompli.

Q. All right. And had Mr. Smith ever discussed the LAP program with you?

A. I don't recall.

Q. Did he say or did you have any knowledge, that is to say Mr. Muir, did Mr. Muir say or did you have any knowledge as to how Mr. Smith had managed to pull this off without the knowledge of you or senior executives at Oakwood?

A. Well, I wouldn't have typically been privy to that kind of information. But in any case, he didn't say how this had been done.

Essentially that was the conversation. And then from there the next thing -- the next awareness that I had of it was the public disclosures then that came within a few days.

Q. Is it possible, Mr. O'Driscoll, that implementation or in the dramatic increase in the LAP program accounted for what appeared to be improvement in the default and repo rate in Oakwood in recent months prior to its termination?

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effect upon availability or eligibility for draws under the warehouse or asset purchase program?

A. No, I don't think so.

Q. Was there a cap on the amount of repos that could be in the pool and the --

A. There was a cap on the number of repo refs that could be in the pool.

Q. And wouldn't it be the case then that to the extent that Oakwood had used the LAP and avoided classifying a given loan as a repo or refi it could avoid that eligibility problem?

A. That would be true.

Q. So the effect of the LAP really was to give Oakwood some short-term liquidity at the expense of long-term liquidity; is that correct?

A. I don't know. I would want to think about that.

Q. All right. Did -- when Mr. Muir told you that Oakwood was cutting out the LAP program did he ask you for any opinion on the subject or ask you to express yourself in any way, or did you?

A. No.

Q. You didn't?

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A. The substantial increase may well have done that.

Q. And once the -- let me just -- I'm going to call this the warehouse, because it's just a --

MR. CASTANARES: I'm going to call it the warehouse line or whatever. I won't call it a loan. But if I refer to it as the warehouse, I'll refer to it the same way that the witness refers to it in various --  
MR. OSNATO: We need to be clear. We've spent a couple of hours today calling it the asset purchase facility.

MR. CASTANARES: Fine. I think that --

MR. OSNATO: So I think for the sake of clarity we should --

THE WITNESS: Well, we can call it what it is, because the asset purchase facility is the term you've generally been using.

And actually I find it a little confusing, because asset purchase agreements are actually one of the building blocks in commercial paper conduit facilities. You're not to know that, but for me at least it's a

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2 little confusing, so...  
3 Q. What would you like me to call it?  
4 A. Can we just maybe call it the loan  
5 purchase facility, which is what its legal name  
6 was.  
7 Q. Okay. That's fine.  
8 A. So it's easier if we all stick to that.  
9 Because there are things called GAPIS and LAPIS,  
10 which I'm sure you don't want to know about.  
11 Q. I don't. I know too much of these  
12 things already, and not enough.  
13 That is the same facility that is  
14 referred to in e-mails as the warehouse and that's  
15 referred to in the e-mails late in 2002 -- just  
16 before the bankruptcy as the warehouse, when  
17 you're talking about getting a waiver from the  
18 warehouse.  
19 That's the same facility we're talking  
20 about, right?  
21 A. Some people -- plenty of people refer  
22 to it fairly casually as the warehouse.  
23 Q. Okay.  
24 A. But its legal construct and its legal  
25 form was a loan purchase facility.

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1 Fiachra O'Driscoll  
2 Q. All right. In connection with the  
3 negotiation and agreement upon the loan purchase  
4 facility, did Oakwood agree to implement the  
5 35 points or any of them that were referred to in  
6 Exhibit 65?  
7 A. Yes. We negotiated down to a smaller  
8 number of points. I don't remember the exact  
9 number of points, but it was still a pretty long  
10 list.  
11 Q. And what effect did that have on  
12 Oakwood's sales?  
13 A. I'm not aware of any effect.  
14 Q. Did these 35 points, or whatever the  
15 number was, constrict Oakwood's underwriting  
16 standards?  
17 MR. OSNATO: Objection to the form.  
18 You can answer.  
19 A. In my opinion they didn't.  
20 Because, again, there was a period of  
21 time in which their credit was, in my view at  
22 least, improving. And from what we saw of the  
23 loans that they were actually purchasing into the  
24 facility, in some places they -- they did run into  
25 constraints and we had to change some of those

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1 Fiachra O'Driscoll  
2 35 points on -- I think on two occasions, if my  
3 memory serves me.  
4 But by and large they were fitting, on  
5 the vast majority of those points, well within the  
6 parameters. So if anything, there was a degree of  
7 leeway that Oakwood had. And on the two occasions  
8 on which they found the 35 points, or whatever the  
9 number was, didn't work for them they came to us  
10 and sought waivers.  
11 Q. All right. And did the default repo  
12 rate improve after the implementation of these  
13 35 points?  
14 MR. OSNATO: Objection.  
15 We've clarified that there have been a  
16 number of points. We haven't established  
17 that all 35 --  
18 MR. CASTANARES: Whatever they were.  
19 MR. OSNATO: -- were embedded in the  
20 agreement.  
21 A. I would need to go back and take a  
22 look.  
23 Q. You just don't remember?  
24 A. I don't know.  
25 Q. Okay.

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1 Fiachra O'Driscoll  
2 A. But what I do know is that the average  
3 quality of their new loans had been improving  
4 throughout that period.  
5 Q. All right. And you just can't recall  
6 off the top of your head whether it improved after  
7 the implementation of these points?  
8 A. That would be correct. At any specific  
9 point in time I'm not sure I remember.  
10 MR. CASTANARES: All right. I'll  
11 ask -- or I will actually mark as Exhibit 66  
12 CSFB 292514 through 2516.  
13 (CSFB Exhibit 66, Three-page e-mail,  
14 bearing Bates stamp Nos. CSFB-00292514  
15 through CSFB-00292516, marked for  
16 identification, as of this date.)  
17 (Witness looks at document.)  
18 THE WITNESS: Thank you.  
19 Q. Do you remember receiving this  
20 document?  
21 A. I do.  
22 Q. And do you know who Stella Young is?  
23 A. No, I don't.  
24 Q. Okay. What transaction is referred to  
25 in this?

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1 Fiachra O'Driscoll  
2 A. This was the transaction I described a  
3 few minutes ago, which was the mortgage  
4 securitization in which we put a B2 in as part of  
5 the collateral within the deal. The one where --  
6 the e-mail from Janie referring to the 60 to  
7 65 cents on the dollar.  
8 Q. Okay. So this is -- you used an old B2  
9 in a new securitization?  
10 A. Correct.  
11 Q. Okay. And did that actually then  
12 happen?  
13 A. It did.  
14 Q. Okay. And did you -- when you received  
15 this e-mail did you understand Mr. Rich to be  
16 communicating legal advice to Oakwood?  
17 (Witness looks at document.)  
18 A. Well, specifically what he -- what this  
19 whole thing related to, was when we were going to  
20 do this originally the presumption was that we  
21 would be able to do it from Oakwood's mortgage  
22 shelf, meaning the registration statement at the  
23 SEC that Oakwood habitually used for the  
24 securitization of these transactions either before  
25 or after the loan service facility was put into

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2 place.  
3 And we ran into this concern that one  
4 of the lawyers -- I think it was Chris Lewis at  
5 Simpson Thacher that pointed it out, which was --  
6 which was that you couldn't, in fact, do that  
7 where one of the securities in question wasn't  
8 itself, in fact, a registered security. And  
9 therefore we were going to have to do that next  
10 upcoming securitization as a 144-A securitization,  
11 rather than as a bottom transaction.  
12 Q. And who did Simpson Thacher represent?  
13 A. Credit Suisse.  
14 Q. And was this a full securitization,  
15 that this was done with all of the various  
16 tranches to it, or was it just a placement of the  
17 B2s?  
18 A. This was a full securitization.  
19 MR. CASTANARES: Exhibit 67 will be  
20 482173 through 77.  
21 (CSFB Exhibit 67, Five-page document,  
22 bearing Bates stamp Nos. CSFB-00482173  
23 through CSFB-00482177, marked for  
24 identification, as of this date.)  
25 (Witness looks at document.)

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1 Fiachra O'Driscoll  
2 THE WITNESS: Thank you.  
3 Q. Is Jesse Sable somebody that worked in  
4 your department?  
5 A. He worked in the financial engineering  
6 group.  
7 Q. Okay. Why had he requested this  
8 particular data at this particular time?  
9 A. I don't remember.  
10 Q. Do you recall what use you made of this  
11 data when you got it?  
12 A. No, but this is very typical. I think  
13 I described to you what the collateral analysts  
14 who were a subgroup within the financial engineers  
15 did, which was that they produced summaries of the  
16 information from the loan tapes that they would  
17 get from Oakwood that would summarize the  
18 characteristics of particular loan pools. So this  
19 was very, very typical of what they would  
20 routinely do in a transaction.  
21 Q. Did this have to do with a  
22 securitization or with a loan purchase facility?  
23 A. I don't know.  
24 MR. CASTANARES: Exhibit 68 will be --  
25 I guess it will be 178954 and 5.

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1 Fiachra O'Driscoll  
2 THE WITNESS: Thank you.  
3 (CSFB Exhibit 68, Two-page e-mail,  
4 bearing Bates stamp Nos. CSFB-00178954  
5 through CSFB-00178955, marked for  
6 identification, as of this date.)  
7 MR. CASTANARES: I'm going to ask you  
8 only about the top message here. You may  
9 read whatever you wish. I don't intend to  
10 ask you any questions about the bottom one.  
11 THE WITNESS: Uh-huh.  
12 (Witness looks at document.)  
13 THE WITNESS: Ready.  
14 Q. Do you recall receiving this?  
15 A. I do.  
16 Q. And is he asking -- is he thanking you  
17 for helping with the loan purchase facility or a  
18 the securitization?  
19 A. The loan purchase facility.  
20 Q. Did you respond to this in any way?  
21 A. I don't recall.  
22 Q. Did you discuss with anybody what the  
23 options were for the company with regard to the  
24 repos that kept coming?  
25 MR. OSNATO: Objection to the form.

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1 Piachra O'Driscoll  
 2 You can answer.  
 3 A. Can you -- the -- it's probably fair to  
 4 say that the repos were -- and the question of how  
 5 to deal with the repos that Bob quite succinctly  
 6 summarizes here was an ongoing topic of  
 7 conversation with the company.  
 8 Q. And did you discuss with him what the  
 9 options were?  
 10 A. Not that I can recall a specific  
 11 instance.  
 12 Q. Did you discuss it with somebody else?  
 13 Or how did you --  
 14 A. I am sure I did, because, again, it was  
 15 one of these things. It was an ongoing topic of  
 16 conversation for really -- for all of the  
 17 securitizations right throughout these years, but  
 18 I'm not sure I have any specific instances.  
 19 Q. All right. Do you know what "OMI SSA"  
 20 stands for?  
 21 A. Yup. It's the Oakwood Mortgage  
 22 Investors Sale and Servicing Agreement.  
 23 Q. And that refers to the loan purchase  
 24 facility?  
 25 A. I'm not certain that it does.

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1 Piachra O'Driscoll  
 2 Oakwood Mortgage Investors was one of  
 3 the entities that I think I described that was in  
 4 the chain of transfer of mortgage loans into the  
 5 securitizations.  
 6 Q. Okay.  
 7 A. So it may be the case that actually --  
 8 I don't know.  
 9 Q. Based upon what Mr. Muir told you about  
 10 the LAP program, do you believe that it was at  
 11 about the time of this e-mail that we've just  
 12 discussing that Mr. Smith ramped up the LAP  
 13 program?  
 14 A. I don't know when it started to ramp  
 15 up. I don't think that there was a sudden  
 16 ramp-up. I think it was from -- from my  
 17 recollection, it seemed -- from my subsequent --  
 18 from the subsequent things I heard, but I'm not  
 19 sure it was ever any one conversation, I got the  
 20 impression that it was a gradual ramp up. But  
 21 that it increased very rapidly in about a  
 22 three-month time period.  
 23 Q. The e-mail Mr. Smith suggests that they  
 24 need new paper to mix in.  
 25 Did you understand that reference?

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1 Piachra O'Driscoll  
 2 A. Yes.  
 3 Q. What was it?  
 4 A. He's summarizing very succinctly,  
 5 actually, the point that I made earlier on, which  
 6 was that the -- it ties into the "sales still  
 7 stink" point.  
 8 THE REPORTER: I'm sorry? "The"...  
 9 THE WITNESS: The "sales still stink"  
 10 point.  
 11 MR. CASTANARES: "Sales still"...  
 12 THE WITNESS: "Sales still stink."  
 13 It's a bit of a tongue twister, isn't it?  
 14 MR. CASTANARES: The reporter has it.  
 15 I can see his computer there.  
 16 THE WITNESS: Very good. You're doing  
 17 better than me.  
 18 A. Because the issue is the "new paper"  
 19 he's referring to, in other words, is the sales of  
 20 new homes. The repos, of course, are the sales  
 21 through all the retail sales centers of  
 22 repossessed, refurbished homes that are crowding  
 23 out the new sales.  
 24 So their problem was that the total mix  
 25 of sales that they were making was -- they were

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1 Piachra O'Driscoll  
 2 spending too much of the energy and the resources  
 3 of the entire system, Oakwood Retail, Oakwood  
 4 Acceptance on remarketing repossessed homes. And  
 5 because in part, because of the shrinkage of the  
 6 number of retail sales centers, they were finding  
 7 it more and more difficult to sell the new homes  
 8 to keep the factory busy.  
 9 Q. Now, did the company ever solve this  
 10 repo problem that Mr. Smith succinctly set forth  
 11 in the e-mail?  
 12 A. No.  
 13 Q. Okay. And other than simply the  
 14 addition of more money what would the mixing in of  
 15 new paper accomplish?  
 16 A. I think the point that he is trying to  
 17 make here -- and forgive me for doing something I  
 18 perhaps shouldn't, which is putting words into his  
 19 mouth here -- but in essence the challenge is  
 20 Oakwood made money from selling new homes.  
 21 Oakwood did not make money from selling  
 22 repossessed homes. So to continue to generate  
 23 profits, to continue to generate revenues for the  
 24 company it had to sell new homes. And every repo  
 25 that it sold, crowding out the sale of a new home.

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1 Fiachra O'Driscoll  
2 was effectively a revenue opportunity that was  
3 lost to the company.  
4 Q. Did it also affect the company's  
5 ability to obtain short-term liquidity, either  
6 through the loan purchase facility or through  
7 securitizations?  
8 A. At one point one of the waivers that  
9 they asked us -- they asked us for was an  
10 amendment to the percentage of repo refs provided  
11 for in the LPP, the loan purchase facility.  
12 Q. All right. And, in fact, you  
13 recommended that waiver, didn't you?  
14 A. I did.  
15 Q. And what happened to it?  
16 A. I think it was approved.  
17 Q. Okay. When did that occur?  
18 A. I don't recall the date exactly.  
19 Q. Do you know who Palm Harbor was?  
20 A. Yes.  
21 Q. Who was it?  
22 A. It was a manufacturer, home  
23 manufacturer based in Dallas.  
24 Q. And were you aware of any talks going  
25 on between Palm Harbor and Oakwood?

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1 Fiachra O'Driscoll  
2 A. I was aware that there were talks going  
3 on between Palm Harbor and Oakwood.  
4 Q. And what was the nature of the talks  
5 that you were aware of?  
6 A. I think that they were trying to figure  
7 out whether or not there was some business that  
8 the company could do together that was going to be  
9 mutually beneficial for the two corporations.  
10 Q. Would this involve some sort of  
11 combination, or merger, or sale of one of the  
12 companies?  
13 A. I don't think it ever got as far as  
14 that.  
15 Q. Did you have any knowledge of the  
16 transaction that they were contemplating?  
17 A. One aspect of it I did have knowledge  
18 of, which was one of the things that they were  
19 looking to do, is Palm Harbor was looking to get  
20 into the mortgage securitization business, didn't  
21 have a mortgage securitization arm of its own and  
22 was hurting quite badly in their view, because  
23 they didn't have the ability to have a mortgage  
24 arm that could finance their own loan production.  
25 Q. They wanted what Oakwood had?

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1 Fiachra O'Driscoll  
2 A. Believe it or not, they wanted what  
3 Oakwood had.  
4 So the gist of it was how could they  
5 work together to use the Oakwood mortgage engine.  
6 Q. And what was your understanding of why  
7 you were being made aware of these discussions?  
8 A. What I do know is that I was asked to  
9 come down. And I think I was present at a  
10 meeting with Lee Posey, who was the chairman of  
11 Palm Harbor at that time, and Myles Standish.  
12 Q. All right. And what occurred at that  
13 meeting?  
14 A. And they discussed the topics that I  
15 have described.  
16 Q. And what did you say at that meeting?  
17 A. I don't recall that I said anything.  
18 Q. Okay. What was your understanding of  
19 why you had been invited to that meeting?  
20 A. Because I knew some of the finance  
21 executives at Palm Harbor. Palm Harbor had  
22 basically hired a number of ex-Conseco executives  
23 to try to set up -- to start-up a finance  
24 operation.  
25 And what Lee was -- I knew these

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1 Fiachra O'Driscoll  
2 gentlemen -- what Lee was trying to do was to  
3 really shortcut the business of growing their own  
4 version of Oakwood Acceptance by finding some way  
5 to work with Oakwood to use both.  
6 Because, you know, Lee I think was  
7 particularly concerned about whether or not in  
8 that period of time -- and I forgot the exact  
9 period of time, but it was a time when -- it  
10 wasn't 1996, if I can put it that way.  
11 Lee was concerned that if he simply  
12 went out and started originating mortgages through  
13 this new entity that they would accumulate loans  
14 and they wouldn't be able to get a securitization  
15 off on their own, given that they were kind of a  
16 first time start-up entity with no track record.  
17 Q. Did anything come of this?  
18 A. I do not believe so.  
19 MR. CASTANARES: Exhibit 69 will be  
20 CSFB 181850 through 51.  
21 (CSFB Exhibit 69, Two-page e-mail,  
22 bearing Bates stamp Nos. CSFB-00181850 and  
23 CSFB-99181851, marked for identification, as  
24 of this date.)  
25 THE WITNESS: Thank you.

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(Witness looks at document.)

THE WITNESS: Right, yeah.

Q. What's this all about?

A. This was the e-mail -- sorry, the securitization we talked about a little while ago. The one in which we put one or more B2 bonds in with the rest of the whole loan collateral. This, as you may recall from one at least of the e-mails we discussed, had to get done as a Rule 144-A transaction, which was one of the relatively few Rule 144-A transactions.

MR. CASTANARES: Exhibit 70 will be CSFB 181713 through 18.

(CSFB Exhibit 70. Six-page document, bearing Bates stamp Nos. CSFB-0018713 through CSFB-0018718, marked for identification, as of this date.)

(Witness looks at document.)

MR. CASTANARES: And just so you know, Mr. O'Driscoll, I may not have any detailed questions for you beyond asking you what this transaction was. So if you can familiarize yourself enough to answer that question, I may or may not have any others.

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MR. OSNATO: Why don't you just look through it, rather than read it carefully. And if you need to go back, you can do that.

(Witness looks at document.)

THE WITNESS: Great.

Q. So what was this all about?

A. Do you have a specific question or...

Q. I'm trying to understand what this servicer facility was.

A. Trying to understand the nature of the transaction here?

Q. Yes.

A. Yes. What this was, this was a somewhat unusual securitization, but one that we had made something of a little specialty of within Credit Suisse at the time and we did for a number of other people as well. And the way it worked in essence was the servicer advances that Oakwood had to make to the securitizations, we essentially resecured all of those by selling the receivables from those advanced amounts into a new trust. And then selling a -- selling a note that was issued from that trust to an end investor.

Q. Okay. So the new investor was getting

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a note issued by a trust and it was secured by receivables?

A. Correct.

Q. And the trust was an Oakwood entity?

A. I believe so.

Q. Did this transaction happen?

A. Yes.

Q. And the collateral for that note was money that the servicing entity at Oakwood was to receive from servicing the mortgages in the collateral pool?

A. Yes.

Q. And these were advances that the Oakwood entity had made for what purpose?

A. These were what are known in the industry as servicer advances. And these are relatively universal features of mortgage securitizations, not just manufactured housing, but even -- you know, even Fannie Mae and Freddie Mac mortgages.

What they are is, if a borrower fails to make its payment on the due date, then the servicer advances to the securitization trust the amount of that delayed payment. And when the

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borrower makes the payment it gets that money back more or less immediately.

In the event that the loan goes all the way to default within the transaction, then the borrower -- sorry, the servicer has a first lien on the proceeds from that repossession to repay itself for those servicer advances.

But one of the challenges for Oakwood was that the amount of the servicer advances, which if I recall it, approached something in the region of \$50 million by the point in this transaction, what was becoming a constraint on their liquidity.

So what they asked us to do was to do a transaction similar to one that we had done for Consec Finance. I think it was a little bit before that, which was essentially to put together a transaction whereby Oakwood could sell those receivables to a securitization trust, have a note issued from that, sell that note to an end investor, and to get the proceeds of that note as essentially an advance -- a return -- an early return of its servicer advances.

Q. Okay. So if the -- in the situation

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2 where the end purchaser or the mortgagor made up a  
3 missed payment, this is an extremely short-term  
4 receivable that Oakwood had, correct?  
5 A. This was a month-to-month receivable.  
6 Q. Okay. And in the situations where the  
7 mortgagor didn't make up the lost payment and the  
8 loan went into a full default Oakwood was  
9 guaranteed it was getting its money back, but it  
10 just was a little bit longer in getting it?  
11 A. Exactly.  
12 Q. So this is a relatively short-term  
13 financing that this facility provided?  
14 A. Well, actually what it did was it  
15 provided this on a revolving basis. So every  
16 month as Oakwood would have to make advances it  
17 could essentially sell those advances into the  
18 securitization trust, get money back for those  
19 advances immediately.  
20 Q. Okay. So what was CSFB's role in all  
21 of this?  
22 A. We were the arranger of the  
23 transaction.  
24 Q. And what does that mean?  
25 A. What that means was that we put

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2 together -- developed the structure for the  
3 transaction, took the transaction to rating  
4 agencies to have the note in question rated.  
5 We -- worked with the rating agencies to do a  
6 financial analysis and, indeed, legal analysis of  
7 the nature of these servicer advances. Got a  
8 rating on the notes, which, of course, only came  
9 after we put the legal documents together for the  
10 securitization trust that would actually buy these  
11 receivables and issue the notes. We found an end  
12 investor for the note who bought and held them.  
13 Q. Who was that?  
14 A. I believe it was Prudential Financial.  
15 Q. Okay. And what fee did CSFB earn for  
16 this transaction?  
17 A. I don't remember, but I do remember we  
18 got a fee.  
19 Q. And what was the amount of this  
20 facility?  
21 A. I think it was \$50 million, the number  
22 mentioned here.  
23 Q. So did Oakwood get \$50 million right  
24 away for this?  
25 A. I don't remember what the advance rate

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2 was. Actually, I think Oakwood got -- I beg your  
3 pardon, I think Oakwood got 50 million.  
4 Q. And what was the cost of this money to  
5 Oakwood?  
6 A. I don't remember the rate.  
7 Q. Okay. And for how long a period did  
8 this facility remain in place?  
9 A. This expired at the date of bankruptcy  
10 or rather it went into what they call amortization  
11 at the date of the bankruptcy, so over the  
12 succeeding months after the bankruptcy the note  
13 paid down.  
14 Q. I see.  
15 So in other words, the -- no more  
16 advances were made under it --  
17 A. Exactly.  
18 Q. -- after the date of bankruptcy?  
19 A. Yes.  
20 Q. And what occurred then was simply a pay  
21 down of the note proceeds of the collateral?  
22 A. Exactly. And actually Oakwood stopped  
23 making those servicer advances at approximately  
24 the date of the bankruptcy filing in any case.  
25 Q. All right. And was there only one note

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2 issued in this transaction or was there a series  
3 of them?  
4 A. I believe there was only one note  
5 issued here.  
6 Q. And was there only one such transaction  
7 or did this happen more than once with Oakwood?  
8 A. I think there was only one with  
9 Oakwood.  
10 MR. CASTANARES: Okay. Exhibit 71 will  
11 be CSFB 182753 and 4.  
12 (CSFB Exhibit 71, Two-page e-mail,  
13 bearing Bates stamp Nos. CSFB-00182753 and  
14 CSFB-00182754, marked for identification, as  
15 of this date.)  
16 THE WITNESS: Thank you.  
17 (Witness looks at document.)  
18 THE WITNESS: Thank you.  
19 Q. Who did you understand "Duane" now to  
20 be?  
21 A. CEO.  
22 Q. And Mr. Smith at this point occupied  
23 what position?  
24 A. He was either the CFO or he was -- his  
25 title changed to, I think, EVP corporate finance.

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2 Q. All right.

3 A. And Suzanne, who had been his  
4 subordinate, took over the CFO title.

5 Q. All right. Now, what road show were  
6 you and he talking about?

7 A. We wanted to take a number of the  
8 Oakwood executives, particularly Bob -- who was  
9 also responsible for OAC, if I remember at the  
10 time -- out to meet with mortgage investors. This  
11 was something that we would do from time to time.  
12 When -- not always, but probably once every year  
13 or two we would take them out to meet mortgage  
14 investors and to talk to them about the  
15 forthcoming securitization, talk to them about  
16 industry conditions, talk to them about things  
17 like that.

18 Q. All right. And so these were potential  
19 purchasers of REMIC securities?

20 A. Yes.

21 Q. Okay. Now, in the third paragraph of  
22 his e-mail Mr. Smith says that, "We are making the  
23 operational changes now at retail that I wish we  
24 had made when I came here. It also allows us to  
25 make the needed changes at OAC."

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2 Did you have any knowledge of what he  
3 was talking about?

4 A. I don't specifically recall what he was  
5 addressing now.

6 Q. Okay. Specifically with regard to OAC,  
7 were you aware of any changes that he had in mind  
8 making at that time?

9 A. I don't recall.

10 Q. Now, are you aware of a corporation  
11 with the name Gingko, G-i-n-g-k-o, in it?

12 A. That was one of the transfer entities  
13 for the loan purchase facility, similar to OMI.

14 Q. All right. And whose company was it?

15 A. It consolidated in as a subsidiary of  
16 Oakwood.

17 Q. Okay. Did you ever deal with anybody  
18 who spoke on behalf of Gingko?

19 A. Gingko, similarly to OMI, was a  
20 transfer SPV.

21 Q. And I'm not sure how that answers my  
22 question --

23 A. I beg your pardon.

24 Q. -- so you better explain it to me.

25 A. There would have been -- it was --

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2 again, forgive me. I'm verging into matters which  
3 you probably want a securities lawyer to get into.

4 But with securitization transactions in  
5 general there's always been a concern as to -- on  
6 the part of the consumer finance and mortgage  
7 finance bar that the -- that if you have a -- if  
8 you don't have a transferor of a security  
9 intermediate between a trust, a REMIC trust most  
10 typically and the original holder of the loans,  
11 that there is some possibility that the transfer  
12 to the securitization won't be seen as being a  
13 true sale.

14 Q. I see.

15 So it's an entity that's interposed to  
16 ensure that legally the transaction will be viewed  
17 as a sale instead of a loan?

18 MR. OSNATO: Objection as to the form.

19 You can answer the question.

20 A. And I've kind of given you a layman's  
21 answer to it, but a more exact answer should  
22 probably come from a lawyer.

23 Q. Okay. And so did you ever speak to  
24 anybody who purported to speak on behalf of  
25 Gingko?

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2 A. No.

3 Q. Do you know who its officers,  
4 directors, or employees were?

5 A. I don't recall.

6 Q. Do you know that it had any officers,  
7 directors, or employees?

8 A. I -- it did not have any employees. I  
9 do not recall if it had directors or officers.

10 Q. Did it have bank accounts?

11 A. I don't recall.

12 Q. Did it have any access to money?

13 A. Can you explain what that means?

14 Q. Well, did it get any income of any  
15 kind?

16 Did it have any revenue of any kind?

17 A. It, again, as with OMI, it existed  
18 purely to transfer loans in and transfer loans  
19 out, usually simultaneously with each other.

20 Q. Okay. And what was Oak Leaf Holdings  
21 LLC?

22 A. That was another one of the entities in  
23 the same chain.

24 Q. Okay. Would your answers be the same  
25 if I asked the same questions about --

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2 A. Yes.  
3 Q. -- who its officers were, whether it  
4 had bank accounts, whether it held meetings,  
5 et cetera?  
6 A. We can shortcut all those questions.  
7 YES.  
8 MR. CASTANARES: Okay. Thank you.  
9 We've got five minutes on the  
10 videotape, so why don't we take five.  
11 MR. OSWATO: Okay.  
12 THE VIDEOGRAPHER: We're off the record  
13 at 4:35. This is the end of tape No. 3.  
14 (Recess taken.)  
15 THE VIDEOGRAPHER: Okay. We're back on  
16 the record. It's 4:42. This is tape No. 4.  
17 BY MR. CASTANARES:  
18 Q. Do you think that the loan purchase  
19 program that was instituted in early 2001 for  
20 Oakwood represented an improvement for Oakwood  
21 over its prior facility?  
22 A. Can you expand on "improvement,"  
23 please.  
24 Q. Was it cheaper money?  
25 A. It was slightly more expensive money.

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2 Q. Okay. Was it more money?  
3 A. It -- I don't recall. I think -- I  
4 think it was about the same amount.  
5 Q. Okay. Did it give more leeway to the  
6 company in terms of collateral quality?  
7 A. I don't know, because I actually don't  
8 know the full terms of the predecessor facility.  
9 Q. Can you think of any particular  
10 advantage that this facility gave -- strike that.  
11 Did the earlier facility require  
12 Oakwood to give the provider of the facility  
13 20 percent of its stock?  
14 A. Nope.  
15 Q. Can you think of any term of this  
16 transaction which represented an improvement from  
17 Oakwood's perspective from what it had before?  
18 A. Absolutely.  
19 Q. Please do.  
20 A. There was two key things. The first  
21 was that the Bank of America facility was a  
22 short-term facility. And Bank of America -- it  
23 was a time period when B of A had kind of reversed  
24 what we talked about earlier on. Because you may  
25 recall that I mentioned that B of A in particular

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2 were pushing hard to -- in exchange for its -- for  
3 taking on credit risk, pushing hard to get  
4 mandates for investment banking advisory services,  
5 securities underwriting and so on.  
6 And B of A had actually kind of gone  
7 through a transition, not just with Oakwood, but  
8 with quite a lot of other people as we got into  
9 that period of time where they actually started  
10 retrenching and they withdrew credit from a lot of  
11 customers.  
12 So one of the things that was -- that  
13 almost certainly the case was that the Bank of  
14 America facility was one that Oakwood was being  
15 put under at -- Bank of America was making it  
16 clear that they were looking to get out.  
17 Furthermore, the Bank of America  
18 facility was fairly short dated. I don't know  
19 what the term of it was, but the term was  
20 364 days, perhaps, that would have been fairly  
21 typical. Whereas what this facility was, was a  
22 three-year committed facility.  
23 Q. Anything else?  
24 A. So having the three-year term as  
25 opposed to a 364-day term gave Oakwood a great

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2 deal more certainty that its problem of how to  
3 deal with its inventory of newly originated loans  
4 had gone away.  
5 Q. All right. Any other advantages you  
6 can think of over --  
7 A. That was an enormous advantage, in my  
8 opinion.  
9 Q. Can you think of any others, however  
10 slight?  
11 A. That was the salient advantage.  
12 Q. Okay. Were you involved in the  
13 negotiation of the various ceilings in the  
14 facility on loan-to-value ratio, FICO scores,  
15 et cetera?  
16 A. Yes.  
17 Q. Were you the primary person who  
18 negotiated those ratios and terms on behalf of  
19 CSFB?  
20 A. There were several people involved in  
21 it at different points of time. I would have been  
22 the main point of contact with Oakwood.  
23 Q. Okay. Was anybody else in direct  
24 contact with Oakwood on those points?  
25 A. I don't recall.

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2 Q. Okay. Who did you talk to at Oakwood  
3 on those points?

4 A. Primarily Doug Muir.

5 Q. Anybody else?

6 A. He's the only one I definitely recall.

7 Q. Were the negotiations entirely oral or  
8 did they proceed in writing to any extent?

9 A. I don't remember.

10 Q. Do you know whether Oakwood ever  
11 requested CSFB to permit it to use any proceeds of  
12 the loan purchase facility for funding its LAP  
13 program?

14 A. I'm confused by your point.

15 Q. I'll try to state it again.

16 Do you know whether Oakwood ever asked  
17 CSFB if it would be okay if it used some of the  
18 money that it got out of the loan purchase  
19 facility to fund the payments it had to make to  
20 operate the LAP program?

21 A. No.

22 Q. You don't know?

23 A. I know that they didn't.

24 Q. Okay. And you know that because you  
25 would have been the person that they would have

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2 convert idea, which, frankly, I don't remember the  
3 details of, that idea in some shape or form had  
4 been knocking around for a long time. And also  
5 other mortgage lenders had done similar kinds of  
6 things at different points of time, so it wasn't a  
7 kind of a new, creative CSFB idea.

8 Q. All right. Were you the first person  
9 who raised it with Oakwood?

10 A. I don't know for a fact, but I probably  
11 was.

12 Q. And was there a negotiation over the  
13 quantity of or the size of this position?

14 A. Yes.

15 Q. Okay. Tell me how that went.

16 A. I do recall that we asked for  
17 25 percent. My recollection is that we were  
18 negotiated down to 20 and that that was then, if I  
19 remember, for some regulatory reason that escapes  
20 me now that was changed to 19.9.

21 Q. It was changed to one share less than  
22 20, correct?

23 A. Something along those lines, yeah.

24 Q. Okay. CSFB shut that facility down at  
25 the time of bankruptcy, didn't it?

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2 asked?

3 A. Well, more specifically the facility  
4 didn't work that way. Unlike a commercial banking  
5 facility, you know, a regular -- a regular, you  
6 know, bank credit facility or something of that  
7 sort where there were covenants and stipulations  
8 that would determine how Oakwood could use the  
9 funds, as was the case, for instance, with the  
10 Foothill facility. Here Oakwood was selling the  
11 loans into the loan purchase facility entity and  
12 getting cash, end of story. They could have spent  
13 it on anything that they pleased.

14 Q. Okay. So there were no restrictions on  
15 its use of the funds that it received from this  
16 facility?

17 A. I don't recall that there were any.

18 Q. Now, were you the person who first on  
19 behalf of CSFB raised the subject of the  
20 20 percent warrant?

21 A. I don't remember.

22 Q. Okay. Did that -- was that -- did that  
23 idea originate in your own head or did it come  
24 from somebody else at CSFB?

25 A. I don't remember. As you saw with the

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2 MR. OSNATO: Object to the form.

3 You can answer that.

4 A. No.

5 Q. It suspended it, correct?

6 A. No.

7 Q. What did it do?

8 A. The transaction itself, if Oakwood  
9 filed for bankruptcy the facility by its terms  
10 forbade -- I think the way it worked was that it  
11 forbade Alpine from purchasing further loans from  
12 Oakwood.

13 Q. Okay. And Alpine then stopped  
14 purchasing at the time of bankruptcy?

15 A. Yup.

16 Q. Was there any discussion within CSFB  
17 over whether or not that should happen?

18 A. Yes.

19 Q. Tell me about that discussion.

20 A. As I recall -- and I don't have all the  
21 paperwork in front of me -- CRM put a -- made --  
22 put in place a number of conditions that they  
23 needed to see put in place at the bankruptcy date  
24 for them to provide for that waiver.

25 Q. When did you first become aware of

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2 those conditions?  
3 A. I don't recall a date.  
4 MR. CASTANARES: How am I doing on 12  
5 minutes?  
6 MR. OSNATO: I think you're probably  
7 about halfway through.  
8 MR. CASTANARES: Oh, okay.  
9 Q. Approximately how long before  
10 bankruptcy did you first hear of these conditions?  
11 A. I think that's exactly the same as the  
12 question you posed to me a moment ago, no?  
13 Q. You don't recall?  
14 A. Yeah, I don't recall the exact date.  
15 It was in the weeks running up to it, possibly the  
16 days.  
17 Q. Can you remember what the conditions  
18 were?  
19 A. In general terms, yes. In very general  
20 terms there was a requirement that the Poothill  
21 DIP facility be in place. Secondly, that there be  
22 a commitment from Berkshire Hathaway. I've  
23 forgotten the exact nature of the commitment, but  
24 there be a commitment from Berkshire Hathaway with  
25 respect to its support of the company.

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2 Those were two. I think there was a  
3 third, but it escapes me now.  
4 Q. Okay. Now, Poothill also made it a  
5 condition of their deal that a loan purchase  
6 facility what they called a warehouse be in place,  
7 correct?  
8 A. Correct.  
9 Q. And Berkshire Hathaway also made that a  
10 condition of their deal, correct?  
11 A. Yes.  
12 Q. How did you propose to solve this  
13 chicken and egg problem?  
14 A. We solved that in the week following  
15 the bankruptcy, in the business week following the  
16 bankruptcy, which happened on a Friday. We solved  
17 that by making it clear to the various parties, if  
18 my memory -- if my memory serves, that we were  
19 prepared to do it if everybody else was prepared  
20 to do it. And we hammered out everybody's  
21 commitments essentially around the table.  
22 Q. So did it actually start funding again  
23 in the week following bankruptcy?  
24 A. I think it got put back in place on the  
25 Friday following the bankruptcy.

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2 Q. So November 22nd?  
3 A. I'm not sure I remember the date  
4 precisely, but the Friday following the date of  
5 the bankruptcy filing date.  
6 Q. All right. So are you fairly convinced  
7 that money started flowing again under that  
8 facility within a week following bankruptcy?  
9 A. It did not flow on that date.  
10 Q. When did it flow?  
11 A. It was sometime in the week or two  
12 following that date.  
13 Q. So are we saying that within  
14 three weeks of Oakwood's bankruptcy money was  
15 flowing out of the facility once again?  
16 A. I don't remember the exact date. I  
17 remember -- I do recall that on the date in which  
18 all of the parties came together and all of the  
19 paperwork was done, that was not the date on which  
20 the money -- on which the first loan sale was  
21 placed.  
22 In part, indeed, because Oakwood by the  
23 mere fact of its bankruptcy filing, its liquidity  
24 situation had improved quite a bit. So I don't  
25 think it actually needed to sell loans then for a

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2 period of time after that.  
3 Q. But it needed to have that facility in  
4 place before the DIP would go forward or before  
5 Berkshire Hathaway would, correct?  
6 A. Well, my recollection is all of those  
7 came together on the same day.  
8 MR. CASTANARES: This is a good place  
9 to break.  
10 MR. OSNATO: Perfect. Thank you.  
11 THE VIDEOGRAPHER: Going off the  
12 record. It's 4:53. This is the end of  
13 tape 4.  
14 (Time noted: 4:53 p.m.)

15  
16 FIACHRA O'DRISCOLL  
17 Subscribed and sworn to before me  
18 this \_\_\_\_ day of \_\_\_\_\_, 2006.  
19  
20 (Notary Public) My Commission Expires:

21  
22  
23  
24  
25

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## ACKNOWLEDGEMENT OF DEPONENT

I, \_\_\_\_\_, do hereby  
acknowledge that I have read and examined the  
forgoing testimony, and the same is a true,  
correct and complete transcription of the  
testimony given by me, and any corrections appear  
on the attached Errata sheet signed by me.

(DATE)

(SIGNATURE)

## C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, DONALD R. DePEW, a Registered  
Professional Reporter, Certified Realtime Reporter  
and Notary Public within and for the State of  
New York, do hereby certify:

That FIACHRA O'DRISCOLL, the witness  
whose deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition is a  
true record of the testimony given by the witness.

I further certify that I am not related  
to any of the parties to this action by blood or  
marriage, and that I am in no way interested in  
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 12th day of June, 2006.

DONALD R. DePEW, RPR, CRR

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WITNESS: \_\_\_\_\_  
DATE(S): \_\_\_\_\_  
CASE: \_\_\_\_\_

I wish to make the following changes, for the  
following reasons:

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REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_

CHANGE TO: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day

of \_\_\_\_\_, 2006.

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